IRREGULARITIES AND SIMPLE IMPEDIMENTS

IN THE

NEW CODE OF CANON LAW

1921

BY THE

REV. JOHN J. HICKEY, S.T.B., J.C.L.

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DISSERTATION

SUBMITTED TO THE FACULTY OF SACRED SCIENCES,
CATHOLIC UNIVERSITY OF AMERICA,
WASHINGTON, D. C.,

IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR
THE DEGREE OF DOCTOR OF CANON LAW
MARCH 18, 1920.

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THOMAS J. SHAHAN, S.T.D.

CENSOR DEPUTATUS.

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INTRODUCTION.

The Church has always exercised the greatest solicitude for the members of her clergy. This fact is clearly evident in her repeated promulgation of decrees of different councils and synodal enactments relative to this phase of her organization. Her efforts in this respect have been nobly and generously seconded everywhere and at all times by the hierarchy as may be substantiated by reliable documentary proof.

The subject of irregularity is of its very nature an important one. Irregularities have been instituted by the Church to preserve the dignity and honor of her ministry. Since a priest is to be another Christ, it is but befitting that not only worthy candidates be admitted to the ministry, but candidates who are capable of performing their duties with that decency and decorum which the sacred character of such duties and the Church require. It is incumbent upon bishops to provide that no one be admitted to the clerical state who is not endowed with the necessary qualifications. Moreover, it is their duty to forbid to those who have contracted an irregularity or impediment subsequent to the reception of orders, the exercise of their office until the irregularity is removed or the impediment ceases to exist.

It is moreover necessary for every priest having souls entrusted to his care to acquaint himself with the subject of irregularity, lest, peradventure, one present himself as a candidate for the priesthood who is not a fit subject.

Finally, the priest, as confessor must know the nature and effect of irregularity, how and when it is contracted, when he may, or may not, absolve, so as to admonish the penitent accordingly.

Several important changes are to be found in the new church law on irregularities. These changes while not very numerous are of practical importance. It is with a view of studying these that the present dissertation was written. The writer has endeavored to present an account of the origin and development of the canons deal-

ing with this subject. The purpose of this is to determine the relations and connections existing between the new and old law. Studied in this light, the exact spirit, meaning and application of the new legislation is more readily evolved.

The legislation in the new Code of Canon Law, dealing with irregularities, is to be found in the third book, (Titulus VI, caput II, Art. II), which treats of ecclesiastical things in general.

The title on simple impediments, which immediately follows that of irregularity in the new Code, is so intimately connected with the latter, that we deemed it proper to accord it a detailed treatment.

The interpretation and application of a new law always gives rise to a certain amount of difficulty. Decisions have already been given to questions proposed, or difficulties submitted. It is only a question of time when more authentic decisions will be had.

CHAPTER I.

DEFINITION AND DIVISION OF IRREGULARITY.

The word "irregularity," etymologically considered, is a compound of the two Latin words "in," which here denotes exclusion, and "regula," rule, hence not according to rule. In the canonical sense, it denotes the absence of certain qualifications necessary for initiation into the clerical state. The word also signifies a departure from the rule, hence, also, in the canonical sense, that in which a man deviates from the law of the Church on irregularity. Prior to the publication of the new Code many definitions were to be found for an irregularity. Many authors understood an irregularity as any impediment which prohibited the reception of orders.[1] Hence they classified as irregular all those who were not as yet confirmed, those who had not attained the canonical age required for orders, those who were destitute of canonical title, those prohibited by the bond of matrimony, etc. While this conception adhered strictly to the etymological derivation of the word, its subsequent signification gradually became more limited. The Church endeavored continually, in her decrees and laws, to establish the doctrine of irregularity on a uniform and certain basis, but through various circumstances her efforts were without avail, and it was not until the appearance of the new Codex of Canon Law that she accomplished her end.

Irregularity, as it exists to-day, may be defined thus: an impediment which, of itself, perpetually prohibits the conferral and reception of every clerical grade, and, consequently, the exercise of orders and acceptance of benefice, instituted by Canon Law—this irregularity arising from some defect or crime, and having for its motive respect for the divine ministry.

Irregularity is an impediment or obstacle and not a censure, or punishment, as is frequently supposed. Some

1 Tamburinus, de ceus, et irreg., lib. X tract IV, cap. I; Van Espen, Jus eccles., tom. I, part II, Sect. I, etc.

men are incapable of performing the offices of the clerical state, or, if not absolutely incapable, cannot perform them with propriety and dignity. Others, again, who have been guilty of certain crimes are considered as unworthy to exercise orders, and to lead men in the paths of virtue. Consequently, the Church has ordained that certain defects and crimes constitute a bar to holy orders. Irregularity arising from defect can be contracted unknowingly, and unwillingly, consequently differs from censures and punishments essentially. Moreover irregularity arising from crime does not participate of the nature of censure or punishment, although, according to soce canonists, it was constituted *ad instar poenae,*[2] since it always involves the commission of a mortal sin. The purpose of censure and punishment is to effect the correction of the delinquent, an element entirely lacking in irregularity of any sort. Irregularity was instituted as an inability to support the honor and dignity of the sacred ministry, which forbids *latae sententiae* the reception of orders, and the exercise of the same.

Perpetuity is an element of irregularity which many canonists, prior to the new law, either doubted or denied. Some authors, however adopted the distinction of Layman,[3] who maintained that an impediment which could be removed without dispensation, or could cease of itself was not an irregularity, but a mere obstacle. An irregularity was contracted, however, when the cause, e. g., a grave physical defect, could not cease naturally even though this were possible through a miracle.

While irregularity was primarily instituted to protect the priesthood, it affects every clerical grade. This is the interpretation of canonists when they call irregularity individual, that is, comprehending the whole clerical state. Consequently it affects even first tonsure, the initiation into the clerical order. This is the common opinion and is borne out in several responses from the Holy Office.

This prohibition is a grave one, consequently both the

2 Bargilliat, tom.I, N. 303. St. Lig. lib., 7, n. 350, sq.
3 Layman, lib. I, tract. V, pars. V, cap. IV, n. 10.

minister and the subject would commit grave sin should ordination be conferred upon a person who is irregular. In this case neither the minister nor the subject is liable to any punishment *latae sententiae*. Irregulars, however, who surreptitiously present themselves for orders are liable to be punished.[4] A grave inconvenience would excuse from the observance of this prohibition. A person irregular would be excused from grave sin, should he be coerced into the reception of orders through grave fear. Likewise should one become aware of an irregularity at the moment of ordination, because in such a case he could not, without great inconveninence, withdraw from the sanctuary. In such instances a dispensation should be obtained for the subsequent exercise of orders. Any case of inadvertence on either the part of the subject or the minister would excuse from sin as is evident.

Since irregularity forbids the conferral and reception of every clerical grade, it necessarily follows that a cleric who is irregular may not exercise the orders he has received. For whoever is excluded from one thing is likewise barred from everything connected with it. It would plainly be absurd to permit one to exercise orders who, by reason of some irregularity, was forbidden to receive them. This prohibition does not affect those acts of orders which are not strictly reserved to one in orders. Consequently an irregular person may perform the duties of a cleric in minor orders, for the reason that these duties are frequently performed by lay persons. One irregular commits grave sin, should he violate this prohibition, unless parvitude of matter, necessity, or grave fear excuse him.

Irregularity prohibits the reception and exercise of sacred orders, to which benefices are attached. It follows, therefore, that irregulars are ineligible for ecclesiastical offices or benefices. There are several kinds of benefices, some of which do not suppose sacred orders. Irregularity incurred without culpability, after the reception of an order, is not an impediment to promotion to a benefice not requiring the use of the prohibited order.[5]

4 Gasparri, "D sacra ordinatione," vol. I, Cap. III, N. 168.
5 Passerini, N. 507.

Although the common opinion of canonists is that the election of an irregular to an ecclesiastical office is *ipso jure* null and void, there does not seem to be any express law on the subject.[6] It is true indeed that the law prohibits the collation of a benefice on a person who is irregular, but it is difficult to prove that such a collation would be invalid. Passerini adduces the argument that the Pope in the collation of a benefice does not dispense from irregularity, as he does in the case of ecclesiastical censures.[7] He argues that if irregularity rendered the conferral of a benefice invalid the Holy Father would dispense from it. A person who is irregular commits grievous sin in accepting a benefice, this is the accepted opinion of canonists.[8] If an irregular desires to retain his benefice, it is necessary for him to obtain a dispensation. He is not bound, however, in conscience to surrender his benefice, unless he be recalcitrant in the matter of seeking a dispensation. Should it be brought to the attention of the ordinary that a person holding benefice is irregular, the ordinary should deprive the delinquent of the office, at least until such a time as a dispensation is granted.

Persons irregular may be elected discreets, electors of a general or provincial, *socii* or definitors to general and provincial chapters, for these offices require jurisdiction in the external forum only, and do not flow from the power of orders, nor are they ordained to it. Irregularity does not impede the power of jurisdiction, nor its use. In a certain sense, these offices could be called benefices still they do not *per se*, or from their nature, suppose orders, nor are they ordained to them, as are simple benefices, which are previous dispositions to orders.[9]

Irregularity is essentially an institution of Canon Law. No particular law, whether it be diocesan, provincial or national, can create an irregularity. The necessity for the Church to have a uniform law upon the subject of irregularity is patent, hence the power of instuting irregu-

6 Gasparri, op. cit., n. 173; "Council of Trent," Sess. XXII, cap. IV, de ref.
7 Passerini, No. 510.
8 Passerini, N. 517. Gasparri, op. cit., N. 173.
9 Passerini, N. 520. Sigismund, dub. 67, n. 3.

larity has been reserved to the Holy See. This principle was first enuntiated in *Cap.* 18, *De sententia excommunicationis in 6to. "I's qui in ecclesia, sanguinis aut seminis polluta, vel qui praesentibus majore excommunicationis nodatis, scienter celebrare praesumunt, licet in hoc temerie agat, irregularitatis tamen (cum id non sit expressum in jure) laqueum non incurrit."* From this we have the famous axiom "Irregularitas non incurritur, nisi fuerit in jure expressa." Saurez[10] made the assertion that no irregularity is to be had in the Council of Trent, or in pontificial constitutions, but solely in the *Corpus Juris.* However the Roman Pontiff is able to constitute particular irregularities for particular places, as was the case in Portugal when descendants of Jews were denied access to holy orders.[11]

Particular custom cannot institute a particular irregularity, but some maintain that a general custom can create a universal irregularity. However, in the present stage of the Church's existence, this is not a practical question. A custom introducing any irregularity would come to the attention of the Holy See before the time of prescription would be fulfilled, and would be either approved or condemned, according as it deemed fit. The new law very definitely states that an irregularity is not incurred, unless expressly contained in the canons.[12]

Irregularity arises either from defect or crime. This is an essential element in every irregularity.

Irregularity, *ratione causae,* is divided into irregularity *ex defectu* and irregularity *ex delicto.* The former results from certain defects which would be incongruous in a person engaged in the sacred ministry. The latter are the result of certain crimes which render a person unworthy to receive, or exercise, sacred orders. This distinction found in the new law was first made according to D'Annibale[13] by Pope Innocent III. While Irregularity is contracted *ad instar poenae,*[14] it is not directly and

10 Disp. XL, sect., I, n. 14.
11 Gasparri, op. cit., n. 159.
12 Canon 983.
13 D' Annibale, I, n. 399, not. I.
14 Bargilliat, Praelectiones Juris Canonici, vol. II, n. 72.

proximately a punishment. The Church in declaring one irregular as a result of certain crimes does not wish to reprimand the delinquent, but to protect the sanctuary from profanation. *Ratione extensionis,* irregularity is divided into total and partial, according as it prevents the absolute reception of orders and the consequent exercise of the same, or as it prevents the exercise of some particular order, or the ascent to a higher order. The irregularity resulting from voluntary homicide is total. A priest who subsequent to his ordination became deaf would be irregular as regards the sacrament of Penance, but could offer the sacrifice of the Mass. A deacon who became blind in one eye would be irregular, as regards his further advance to the priesthood if this would prevent him from properly reading Mass, but is not prevented from performing the duties of a deacon.

Irregularity, *ratione gravitatis,* is divided into dispensable and indispensable. The Church, since irregularity is an institution of Canon Law, may dispense validly from all irregularities, but *de facto* she never exercises this right in particular instances.

A division of irregularity into perpetual and temporal was proposed by canonists before the new law. But, as was noted above, perpetuity is an essential characteristic of irregularity, hence this division no longer can be retained.

CHAPTER II.

THE SUBJECT OF IRREGULARITY.

Those only are able to contract an irregularity who are capable of receiving orders. Consequently those who are forbidden by divine positive or divine natural law to receive orders cannot incur irregularity. The ordination of such as these is not only illicit, but invalid. All females and unbaptized males, even though catechumens, are incapable of contracting an irregularity. Certain defects and crimes which render a baptized man irregular, do not produce this effect in the case of one who is not baptized. Once baptism is received, all faults are washed away, so that it is impossible for one to be irregular by reason of crime committed before Baptism. Should certain defects remain after Baptism, the person incurs irregularity, immediately upon reception of the sacrament.

Irregularity affects all baptized males, whether lay or cleric, bishops not being excepted, although they are not expressly mentioned in the law.[1] "Dices; in episcopo irregularitas nequit producere effectum primarium et directum, et ideo neque alios qui ex illo descendunt, et ita episcopus videtur sub lege irregularitatem inducente comprehendi non posse. Respondemus, etiam in episcopo irregularitatem prohibere collationem—receptionem—receptionem graduum clericalium. Quod si episcopus non habet quos recipiat gradus, id est per accidens; prohibitio manet et prohibet ordines majores receptos exercere, et ideo beneficia excludit."[2]

Indeed the Cardinals of the Church are capable of incurring irregularity, since they are not excepted in law.[3] The Pope is unable to contract an irregularity for the reason that he is not subject to the common law of the Church.

1 Cap. 10, "De renuntiatione," et. Cap. I, "De sent. excomm." n. 60.

2 Gasparri, op. cit., N. 199. Suarez, disp. XL, sect. I, N. 11: D' Annibale, op. cit., N. 401, note 15.

3 Gasparri, 1, c.

Children who have not attained their seventh year cannot be subject to irregularity, (ex delicto) even though they have the use of reason.[4]

It is a much mooted question as to whether *impuberes* are capable of contracting irregularity ex delicto. A boy reaches the legal age of puberty when he has attained his fourteenth year.[5] Those who maintain that they cannot contract irregularity base their claims on the fact that *impuberes* are not perfectly capable of doing wrong, and that they are excused from all punishments[6] *latae sententiae,* and are to be corrected with educative and persuasive means.[7] This opinion is based on the idea that irregularity ex delicto partakes of the nature of a punishment. While this is the common opinion,[8] many hold the opposite. Consequently, the incurrence of irregularity in the case of impuberes as a result of crime is doubtful and a dispensation should be obtained *ad cautelam.*

If one is forced by physical means to commit a crime to which irregularity is attached, he does not incur this obstacle. The one who forces another to commit such a crime incurs the irregularity, since he alone is imputable. One forced in this manner, even though he inwardly consent, is excused from contracting irregularity, for the reason that in the external forum the crime does not exist, and irregularity is more especially concerned with the external forum.[9]

One who commits crime by reason of moral force, as grave fear, is likewise excused from contracting irregularity. If the crime consists in the violation of an ecclesiastical law, it is evident that irregularity is not incurred, since an ecclesiastical law does not oblige with serious inconvenience. Consequently a cleric under censure would not contract irregularity, should he assay to solemnly exercise orders, hoping thereby to avoid scandal, loss of good reputation, etc.[10]

4 "Contra Navarrum," Cons. XXVII, n. 230.
5 Canon 88.
6 Canon 2230 .
7 Gasparri, op. cit., 202.
8 Ibid., n. 202.
9 Ibid., n. 208.
10 Gasparri, 1 c.

Even when one compelled by such fear (moral fear) violates the divine law irregularity is not incurred. Although in such a case the sin is grave, nevertheless, since irregularity was instituted *ad instar poenae,* it is to be presumed that the Church does not wish to have those compelled by grave fear to commit sin, affected by irregularity.

CHAPTER III.

IRREGULARITIES ARISING FROM DEFECT.

Irregularities arising from defect, which have existed in the Church since Apostolic times, may be compared to the ordinances relating to priests, which were given by God to Moses.[1] Since certain qualifications were demanded of priests in the old dispensation, which was but a shadow of the new, it is befitting that priests of the new dispensation, be capable of performing their holy and sacred office with reverence and decorum.

The first trace of irregularity arising from defect may be found in the writings of St. Paul,[2] when, for example, he excluded bigamists and neophytes from the reception of the bishopric.

The number of irregularities was in due time increased and their nature more accurately defined.[3] While statutes were enacted on this subject in the early history of the Church, the word irregularity itself is not found in the early canons, and was employed for the first time by Innocent III in the twelfth century.[4]

Van Espen wrongly contends[5] that the expression "alienus a canone" applied by the first Council of Nicea to a cleric guilty of usury, is identical with irregularity. In this instance, the Council refers to suspension rather than to irregularity.[6]

Subsequently, we find that the word irregularity assumed a rather general signification. It was employed in ecclesiastical law, and in the canonical schools as a synonym for censure, especially the censure of suspen-

1 Levit. XXI-XXII.
2 I Tim. III sq., V. 22, Tit., I-6 sq.; Wernz, Jus Decretalium, Vol. II, tit. VII.
3 Cf. Conc. Illiber. (a. 300-306); c. 2. Conc. Arelat. (a. 314) c. 8. II. 12. Conc. Neocaesar, (a. 314-325); c. 1, 2, 9. Conc. Concil Nicean (a. 325); Concil. Tolent IV (a. 633).
4 In cap. 10, De renuntiatione, I-XX.
5 In Jur. eccls. Univers. t. I, p. 2.
6 Boeninghausen, De Irregularitatibus, cap. III, n. I. Gasparri, op. cit., p. 91, n. 155.

sion.[7] In the law of the decretals no particular rubric on irregularity is to be found. The laws concerning this subject were inserted under different rubrics in Books I and V. Consequently there arose great difficulty in distinguishing irregularity from the censure of suspension and various other punishments.[8]

Since in the decrees of the Council of Trent, and in subsequent constitutions of the Roman Pontiffs, no new irregularities were introduced, it was necessary, prior to the Code, to consult very ancient authority in order to ascertain the exact nature of any irregularity.

I.

IRREGULARITY ARISING FROM ILLEGITIMACY.

The first irregularity arising from defect, mentioned in the Code, is that of illegitimacy. Illegitimacy denotes the condition of children born out of wedlock, excepting the case of a putative marriage. In the ancient law, a person of good morals was not excluded from the priesthood, even though he were born illegitimately. This was true not only in the Eastern, but in the Western Church as well. In the year 655, we find the discipline of the Church in this matter gradually changing, for, at this time, the Ninth Council of Toledo decreed that all illegitimate offspring of clerics who had received major orders were to be held as serfs of the Church, and were not to be admitted to holy orders, unless first manumitted by the bishop.

In the ninth and tenth centuries access to orders was denied to those born of violated virgins or of incest. In due time, various canons were introduced which dealt with the different details of illegitimacy, until we find that all children born out of wedlock were considered as irregular.

The reason for instituting this irregularity was threefold. (A) *Ratione originis,* an illegitimate was consid-

7 Honor. III in cap. 24, X de homicid. V. 12.
8 Gasparri, op. cit., n 176.

ered an unworthy candidate to exercise the sacred ministry. (B) The Church wished to manifest its abhorrence of the paternal sin. (C) There is danger that the illegitimate offspring would be predisposed to commit similar acts, by reason of the paternal incontinence.

In the present discipline of the Church, illegitimates, both of public and occult illegitimacy, are irregular, unless they have been legitimated, or have made solemn profession.[9]

Legitimate children are those who have been conceived or born in valid marriage, or in a marriage contracted in good faith, though invalidly. This latter is the so-called putative marriage, namely, an invalid contract in which, at least one of the parties believes they are validly wedded. It remains putative, moreover, until both parties become certain that the marriage is invalid. A putative marriage has all the effects of a valid marriage, consequently the new Code, in conformity with the ancient discipline, states that the offspring of such a union is considered valid. This concession in favor of the children resulting from a putative marriage is based on the good faith of the supposed consorts.

Should the consorts make solemn profession in a religious order, or should the husband receive sacred orders, the use of marriage is forbidden to them. As a result, the children conceived and born after such a vow or ordination are considered illegitimate. Legitimation, in such cases, can be effected only by a special mandate from the Holy See.[10]

In case of doubt as to the father of a child, Canon Law follows the old Roman law, by declaring that he is to be considered the father who appears to be so by valid marriage, unless the contrary be proven.

In canon law, children born at least six months after the date of marriage, or within ten months from the dissolution of conjugal life, are presumed legitimate, unless there be definite proof to the contrary.[11] Even if the

9 Canon 984 n. I.
10 S. C. Ep. et Reg. 20, Jan., 1860.
11 Canon 1115, n. 2.

mother should confess her infidelity and acknowledge that she had adulterous relations, the child may claim legitimacy, provided the following conditions are fulfilled. The child must be born not less than one hundred and eighty days after the parents have contracted a valid marriage, and not more than three hundred days after separation. This, of course, is a presumption of law, and, if definite proof could be produced that the offspring was the result of adulterous relations, it would be considered illegitimate.

A child is legitimated by the subsequent marriage of its parents, whether real or putative, newly contracted or validated, even though not consumated by the conjugal act, provided the parents were able to contract marriage at the time of the conception, or while the mother was pregnant, or at the time of the birth of the child. The Code omits to mention legitimation by papal rescript, a method of procedure in vogue in the old law. The Pope can legitimate not only natural, but also spurious children, and the extent of a papal rescript on this subject has to be interpreted according to the general rules.

Canonists generally divide illegitimate children into two main classes, spurious and natural. The former is subdivided into adulterine, sacrilegious, incestuous and nefarious. The offspring is said to be adulterine, when it is the result of adulterous relations. It is called sacrilegious when the child is born of parents who, at the time of conception, were bound by a solemn vow of chastity, or when the child's father was in sacred orders at the time of conception. An incestuous offspring is that in which the parents of the child labored under the impediment of consanguinity or affinity, at the time of conception. A nefarious offspring is had when a child is born of a mother and son, or of any direct ascendant or descendant. A natural illegitimate child is one born of parents capable of contracting a licit and valid marriage.

The new law does not legislate as regards children whose parents are unknown, hence the common opinion that they are legitimate must be upheld unless the contrary can be established. Foundlings are frequently the

result of poverty or other causes. However, a conditional dispensation should be obtained *ad cautelam.*

In a dispensation from this irregularity, the clause "dummodo paternae incontinentiae imitator non sit" is generally added to the rescript. In answer to a query as to how the bishop was to proceed in accordance with this clause, the S. C. C. replied "Clausulae illi (dummodo paternae incontinentiae imitator non sit) in litteris dispensationis appositae, non aliter per episcopum satisfieri, quam inquirendo quod nihil bonis moribus indignum compererit; quod si integro decennio dispensandus probe vixit, debere exequi litteras dispensationis, quamvis prius incontinentiae nomine suspectus esset; sed in hoc casu debere episcopum accuratius inquirere ad diluendam prioris vitae suspicionem."[12]

Sometimes in the dispensation a limiting clause is added,[13] so that a special dispensation would be required should one become a candidate for a higher order.

When a dispensation is asked for from this irregularity the species of irregularity should be mentioned, namely, whether the person irregular is spurious and in what sense, or natural. The reason for this is that a dispensation would be conceded in the former case with greater difficulty than in the latter.

This irregularity is incurred whether the illegitimacy be public or occult, consequently if the person himself is the only one aware that he was born out of wedlock, a dispensation must be obtained.

IRREGULARITY ARISING FROM PHYSICAL DEFECT.

In the Mosaic law, men who suffered from certain physical defects, were debarred from the divine ministry. "And the Lord spoke to Moses, saying: 'Say to Aaron: whosoever of thy seed throughout their families, hath a blemish, he shall not offer bread to his God, neither shall he approach to minister to him: If he be blind, if he be lame, if he have a little, or a great, or a crooked, nose, if

12 Ben. XIV., De Syn., XIII, XXIV, n. 22.
13 De Smet, n. 168, Wernz., op. cit., n. 686. Gasparri, op. cit., n. 243.

his foot or his hand be broken, if he be crookbacked, or blear-eyed, or have a pearl in his eye, or a continual scab, or a dry scurf in his body, or a rupture.' "[14]

By divine law certain corporeal defects constitute an obstacle to orders.[15] The Church, on the other hand, has enacted legislation as regards the matter of physical inability, which is comprehended under the irregularity *ex defectu corporis*.

This irregularity was instituted at a very early stage of the Church's existence. Thomassinus maintains[16] that in the first five centuries defect of body did not constitute a bar to orders, unless this defect excluded a person from holy orders by divine law. This was especially true in the Greek Church. Sanctity and holiness of life were considered as requisite and not physical perfection.[17] Thomassinus states[18] that Pope Hilarius, d. 468, first excluded clerics from the priesthood who had labored under certain defects. Pope Gelasius confirmed this discipline in a letter to the Bishops of Lucaniae, fragments of which are to be found in *C.* I, *D.* 36, and in *C.* 59, *D.* 50: "Nec fas esse confidat quisque pontificum bigamos aut conjugia sortientes ab aliis derelicta, sive quoslibet poenitentiam, vel sive litteris, vel corpore vitiatos, vel conditionarios, aut curiae publicarumque rerum nexibus implicatos, aut passim nulla temporis congruentis expectatione discussos, divinis servituros applicare mysteriis. Illiteratos quoque et nonnullaparte corporis imminutos sive ullo respectu ad ecclesiasticum didicimus venire servitium, etc." However, not every species of corporal defect was included under the Gelasian prohibition, hence we find the title "De corpore vitatis ordinandis vel non."

The following were excluded, in the Gelasian decrees, from holy orders, (A) those who were totally unable to celebrate mass, (B) those who, by reason of their physical defect, were irreverent in the celebration of mass, (C)

14 Levit., XXI, 16, seq.
15 Wernz, op. cit., Tit. VII, n. 2, p. 110. Gasparri, op. cit., p. 156, n. 250.
16 Thomassinus, p. 2, Lib., I cap., LXXVIII, n. 1.
17 In Constitutionibus Apostolicis, lib. VII, c. 18.
18 Thomassinus, 1. c.

those who caused scandal or ridicule, while reading mass; (D) those who were unable to observe the liturgical laws at mass.[19]

In the course of time, laws promulgated by the Roman Pontiffs and Councils more accurately defined the nature and extent of this irregularity.[20] These canonical sanctions, which were retained in the Decretum of Gratian; in the five ancient compilations, and in the authentic compilation of Gregory IX practically constitute the discipline on this irregularity as it exists in the Church to-day.

In the present discipline of the Church, bodily-defective men, who, by reason of their physical inability, cannot safely, or, by reason of their deformity, cannot with due decorum, exercise the office of orders, are forbidden to engage in the sacred ministry of the altar. Should the corporal defect follow after the reception of orders, a greater defect is required to debar a cleric from exercising those orders he has already received.[21]

Defect of body may be divided into four main classes, debility, mutilation, deformity and incurability. Under the general head of debility is included, (1) Blindness, strictly so-called, namely the state or condition of a person destitute of all sight in both eyes. A person thus afflicted, and who has not received orders, seldom receives a dispensation.[22] A dispensation to exercise their office is more frequently granted to priests who have become blind.[23] The recipient of such a dispensation is permitted, as a rule, to say only one particular mass, generally that of the Blessed Virgin. A dispensation of this kind was given in Florence, 23 Aug., 1727. Another priest must be present during the celebration of mass in such cases.

19 S. Alph., VII, n. 404; Pirling, I, XX, N. 1; Reiff, V. XXXVII, N. 80; Gasparri, op. cit., n. 252.

20 C. 10, D. 34. (Greg. I); C. 10, D. 55 (Conc. Tribur. a. 895); C. 3, D. 33 (Conc. Tolet. XI, a. 675.) C. I. C. VI, q. 2 (Alex. II). Cap. IV, X., de cler. aegr., III 6.

21 Canon 984, N. 2.

22 A rather extraordinary exception to this rule is the case of Father P. Wessling, of the Society of Jesus, who lost his sight as the result of an accident in a chemical experiment, and later received a dispensation and was advanced to the priesthood.

23 Gasparri, op. cit., N. 256.

A person so nearly blind that he cannot read mass with becoming dignity is likewise irregular, unless by means of strong glasses, or other instrument, he can overcome this defect. Ordinarily such a one is permitted to celebrate regularly the mass of the Blessed Virgin Mary; or, to celebrate the aforesaid Mass on feast days and doubles, and, on ferials, the Mass of the dead. The Ordinary has the power of revoking this permission, if the priest should become totally blind. When total blindness is feared in the immediate future, a dispensation is seldom given for the reception of orders. Dispensations were refused in cases of this kind on several occasions.[24]

One who suffers from squint eyes is not irregular, unless this affliction prevents his reading mass. This is true also of one who is cross-eyed.[25]

Those who enjoy sight in only one eye are ordinarily not irregular. It is necessary, however, that the person be able to read the canon of the mass without too great an effort. Some canonists maintain that a man blind in the so-called canonical eye (namely, the left eye) is irregular as regards his advance to orders. This opinion, however, is not borne out in law, so that the more common view must be upheld, namely, that so long as one is able to read sufficiently in one eye, whether it be the left or right, he is not irregular. Should a person suffer the loss of an eye by operation, or accident, he would incur this irregularity, by reason of the resultant deformity. The same must be said of one who has a notable mark or blemish on one of his eyes.[26] It is possible, frequently, however, to remove these two deformities by means of an inserted glass eye.

II. Dumbness, or the lack of power to speak. This irregularity was constituted by divine law, so that the Roman Pontiff is unable to dispense from it. Some, indeed, contend that the ordination of a mute would be invalid, but this is not the common opinion of canonists. This irregularity arises, likewise, when one is totally un-

24 S. C. C. in Vercelen., 28, Jan., 1860; in Carcassounem., 27, Feb., 1860; in Colonien., 13, Sept., 1863.
25 Gasparri, op. cit., N. 258.
26 Gasparri, op. cit., N. 258.

able to pronounce his words, or is unable to pronounce them intelligibly. A person who stammers or lisps to such an extent as to cause laughter or irreverence incurs the same irregularity.

III. Deafness, or the inability to hear, constitutes an irregularity, as regards the recepton of orders, and the administration of the sacrament of penance. A deaf priest may celebrate Mass, even though unable to hear the response of the server. Most canonists maintain that a person deaf only in one ear, or whose hearing is deficient, is not irregular. A dispensation from this irregularity is more readily obtainable.

IV. Mutilation, in general, is the abscission of some member of the human body, which is necessary for its integrity. It is the accepted teaching of canonists that the removal of an important part of a member has the same juridical effect as the removal of the member itself. Hence a person is said to be mutilated if a principal member is separated from the body, as the eye, arm, limb, etc.

In many cases, grave mutilation may be present, but irregularity is not incurred.

Those irregular as a result of mutilation are: All who are destitute of limb, arm, hand or fingers (more especially if the missing members be the thumb and index finger), likewise those deprived of the use of the same. There is no record of a dispensation ever having been granted to a priest to say mass, who had lost the right arm. The contrary, however, is the case, where the left arm is in question. A dispensation in this latter case was given by the S. C. C. in Litornercien, 24 Sept., 1864. A person having both arms, however, but unable, by reason of some infirmity, to utilize one or the other, could seldom obtain a dispensation for his advance to the priesthood. However, he might be permitted to exercise some of the offices of the priesthood, should he have already received orders, e. g., administer the sacrament of penance, with the mere pronouncement of the words, the other ceremonies being omitted. This irregularity is incurred in like manner by a person without one or the other hand.

or unable to use either; a dispensation is obtainable in practically the same instances as above.

A priest who has lost the palm of his hand with at least two fingers is irregular, as regards the celebration of the sacrifice of the mass. Likewise, a priest who has been deprived either totally or in an important part, through operation or accident, of his thumb and index finger, or is unable, by reason of some disease to use the same. Several cases are on record in which a dispensation to receive orders was granted, when only a minor portion, as, for instance, the phalanx of the thumb and index finger, was wanting. A dispensation was also granted to a person to receive sacred orders who was destitute of the whole thumb of the left hand.[27] The absence of one, or even two, of the last fingers is not, according to the common opinion, a sufficiently grave mutilation to constitute an irregularity. However, if all three of the aforesaid fingers are removed, irregularity to receive orders is incurred, not because of the inability to administer the sacraments, but by reason of the grave deformity. A priest, however, is not considered irregular, nor is he prohibited from offering the august sacrifice of the mass, even if all three of the posterior fingers have been abscinded. A person without the index finger will more readily obtain a dispensation, if it can be demonstrated that the middle finger will supply the place of the missing member. Some maintain, with Ballerini-Palmieri, VII, N. 478, that a priest who has lost his index finger may employ his middle finger in its stead in the sacred functions, for the reason that the whole hand of the priest is consecrated in ordination. According to Ballerini Innocent I declared that if a person should himself abscind, even a portion, of his finger he would incur irregularity, by reason of the sinfulness of the act.[28]

Authors generally consider a person as irregular who has suffered the amputation of one or the other of his limbs or feet. This is especially true if such a one could not celebrate the mass without serious difficulty. At the

27 Gasparri, op. cit., 264.
28 Ballerini, Theol. Moral. Vol. II.

present time, when artificial limbs are so ingeniously and so perfectly constructed, this irregularity would seem to be non-existent in many cases, especially after the reception of orders. It is left to the good judgment of the ordinary to decide in all such cases.

V. Under the general head of defect of body, those are irregular who are deformed, that is, those having a notable defect in any important member.

A lame person, who is unable to walk without the help of a cane, is irregular, both for promotion to the holy office of priesthood, and for the subsequent use of certain of the orders he may have received.[29] One notably lame, even though he would not require the use of a cane, is generally considered as irregular, it being presumed of course that the affliction is of a permanent character. Temporary lameness does not beget this irregularity.[30] In the case of an ordained priest, the deformity must of necessity be of a much greater nature in order to prevent him from exercising his ministry.

A person who has had his nose or ears removed by amputation, or some accident, is irregular, unless, in the latter case, the hair can be made to cover the deformity in a reasonable manner.

Dwarfs, giants, and hunchbacks are irregular by reason of their deformity.

VI. Under the head of incurability, are included all those who are suffering from certain ailments from which there is no hope of recovery.

Paralytics, and persons suffering from similar diseases, are absolutely irregular and cannot be advanced to orders, without a special dispensation, which is very seldom granted. A priest suffering from any such disease may more readily obtain a dispensation, if the disease does not interfere seriously with his sacred functions. Lepers are irregular for the reception of orders, but a priest thus afflicted may say mass privately, and in a colony of lepers exercise the offices of his state.

Syphilitics are irregular, if the symptoms of their af-

29 C. 57, D. I.
30 C. 18, D. 55.

fliction are readily apparent. In the latter event, such a one may be permitted to celebrate mass privately.

Persons who are unable to drink a very small portion of wine without experiencing nausea, accompanied by vomiting, are irregular, even should they become thus afflicted subsequent to the reception of orders.

In general, any notable distortion of a prominent member begets this irregularity, especially if it be of such a nature as to excite irreverence or ridicule.

Hermaphorodites are irregular as a result of their deformity. Hermaphrodites properly speaking are human beings who possess the organs of both sexes. It is the common opinion of scientists that a person who was able to act either the part of the man or the woman in the process of generation, never existed. Hermaphordites improperly speaking have existed, that is persons of a determined sex who however possessed some specific organs of the opposite sex. Some individuals the exact sex of whom is difficult to determine are also called hermaphrodites. These latter are originally incapable of generation. Every class of these persons is excluded from the clerical state.[31]

Those who are suffering, or have suffered, from tuberculosis are not irregular for the reason that this is now a very readily curable disease. A person in an advanced stage of this disease should not be advanced to orders, because it is more difficult then to effect a cure, although the progress of the trouble may, even in this case, be arrested to such an extent as not to interfere in any way with even the reception of holy orders.

IV.

IRREGULARITY ARISING FROM EPILEPSY, INSANITY AND DEMONIACAL POSSESSION.

The new law states that those who are, or have been, subject to either the affliction of epilepsy, insanity, or demoniacal possession, must obtain a dispensation from the

31 Noldin, op. cit., vol. III, n. 553.

irregularity. In the case of those already ordained, should they become thus afflicted, the ordinary has the right to decide whether they are cured of their ailment, and, if so, to allow them again to perform the sacred functions of their state in life.[32]

Even prior to the publication of the new Code, canonists considered epilepsy and insanity as physical moral diseases which rendered a person irregular. The irregularity arising from diabolical possession was generally treated under a separate heading. Epilepsy is practically an incurable malady, especially when the symptoms develop after the age of puberty. Before one has attained to that period of life, more hope of effecting a cure by the employment of prolonged and persistent treatment, can be had. The age of puberty, as here employed, refers to that period in life at which a person becomes functionally capable of generation. The age at which puberty in this sense is attained varies in different climates and among different races, also among those of the same race and country. In law, as before noted, a boy reaches the age of puberty when fourteen years of age. The Code, however, employs the term "censetur" which involves a supposition and not an absolute or general truth. Hence, in the matter of a dispensation of this sort, medical attestation must be followed. The Holy See seldom dispenses from the irregularity incurred as a result of epilepsy, when the disease has been contracted subsequent to the age of puberty. If the disease be contracted anterior to this period in life, and all attacks and symptoms disappear for several years, so that, in the opinion of medical authorities, a total cure has been effected, a dispensation is more readily obtainable.

A priest who becomes subject to this malady may not say mass, even though the attacks occur at distant intervals. Before the Ordinary may exercise his right, there must be at least some medical authority to support the opinion that the malady has been cured, or that its progress has been sufficiently arrested.

The new law mentions epilepsy specifically, hence other

32 Canon 984, N. 3.

diseases whose symptoms are similar do not beget this irregularity.

The insane, by reason of their total irresponsibility are irregular. Every species of permanent insanity is included under this irregularity. The insanity arising as the result of certain diseases and accidents, when it is only of a temporary nature, does not beget this obstacle to the reception, or exercise, of the ministry. When mental derangement is but temporary or transient, it is more properly termed delirium of fever, of intoxication; it is properly called insanity, when the deranged, or perverted condition, is continuous or persistent. The principal forms of insanity are delusional insanity, (when one is subject to delusions), dementia, (unsoundness of mind to the degree of total loss, or serious impairment of the faculty of coherent thought), mania,—(a form of mental unsoundness usually characterized by derangement of the intellectual faculties, shown in hallucinations and delirium, and by passionate emotional excitement),— melancholia, (mental derangement characterized by excessive gloom and depression, and usually accompanied by a tendency to brood over a single subject), and paranoia, chronic mental unsoundness, the symptoms of which vary greatly. These, with their subdivisions, constitute the principal forms of permanent, or persistent, insanity, which cause an irregularity.

Man may become subject to evil spirits in various ways. The devil may attack one from without (obsession), or assume control of him from within (possession). It is the common teaching of the Fathers and Theologians that the soul can never be possessed by an evil spirit, though its ordinary control over the members of the body may be hindered by the possessing spirit. Mistakes are often made in the diagnosis of cases and results attributed to diabolical agency that are really due to natural causes. Consequently, it must be definitely established that a person is, or has been, possessed before he can be declared irregular. In our day, instances of demoniacal possession are rare, so that great caution must be employed, in deciding any particular case. It is evident that a person

who is in actual possession of an evil spirit cannot be advanced to orders. This prohibition originates from divine, rather than from Canon Law.[33] Such a one is, moreover, absolutely debarred from exercising the orders he may have received. This law was instituted by Pope Gelasius and is retained in C. 5 D., 33, "Usque adeo sane comperimus, illicita quaeque prorumpere, ut daemoniacis, similibusque passionibus irretitis, ministeria sacrosancta tractare tribuatur. Quibus si in hoc opere positis aliquid propriae necessitatis occurrat, quis fidelium de sua salute confidat, ubi ministros ipsos curationis humanae tanta perspexerit calamitate vexari? Atque ideo necessario removendi sunt, ne quislibet pro quibus Christus est mortuus, scandalum generetur infirmis, etc."[34]

Before the new law, it was a disputed question whether one who had been possessed but was later freed from the evil spirit could be advanced to orders. Some theologians according to Gasparri, thought that such a person could receive tonsure and minor orders. Others, indeed, were of the opinion that, barring the accidental circumstance of scandal, such a person could receive holy orders. The third opinion was that a person who had been possessed, could not be advanced to any clerical grade, without a previous dispensation. This latter opinion has been sustained in the new law.[35]

If it be definitely established that a person in orders has been absolutely liberated from the possessing spirit, the Ordinary may permit him to exercise the duties of his office.

The term Ordinary as employed in the new Code and in the present dissertation includes all those enumerated under canon 198. In law the term refers to the Roman Pontiff, bishops, abbotts or prelates nullius, and their vicar generals, administrators, vicars and prefects apostolic, in their respective territories, and in case of vacancy in these offices, to those who by law or legitimate custom succeeded them in office. In exempt clerical reli-

33 Gasparri, op. cit., N. 273.
34 Gasparri, n. 274.
35 Canon 984 n. 4.

gious orders the major superiors also come under the term ordinaries. On the 8th of December, 1919, vicars and prefects apostolic, were given the power of choosing their vicar generals. These latter moreover were endowed with the power of ordinary jurisdiction, and hence are now comprehended under the term Ordinary. (Acta. Ap. Sedis Jan. 1920.)

The new law refers to possession, consequently, one who has been obsessed by an evil spirit does not incur irregularity.

IRREGULARITY ARISING FROM BIGAMY.

V.

The word bigamy is a compound of the Latin word *bis*, twice, and the Greek word *gamos*, marriage. In the commonly accepted meaning of the word, it denotes the crime of marrying any other person while having a legal spouse living. According to Blackstone, "Commentaries on English Law" (Lib. IV, n. 163) this is a corruption of the true meaning of the word. In the strict meaning, the word bigamy signifies the marrying of a second, after the death of the first wife, in contradistinction to polygamy, which is having two simultaneous wives. This is its precise meaning, as it exists in the new Code of Canon Law. This defect gives rise to an irregularity, which impedes the reception of orders.

This irregularity existed at a very early date in the history of the Church. St. Paul, in his first Epistle to Timothy, enumerates the qualifications with which a bishop and deacon should be endowed. (I Tim. III, 2, sq.) "It behoveth, therefore, the bishop to be blameless, the husband of one wife." "Let deacons be the husband of one wife." At that stage of the Church's existence, few men practiced the virtue of celibacy, consequently it was necessary to admit married men to the ministry. This irregularity was considered by the Apostles and early Fathers, to have been instituted for the reason that bigamists were suspected of grave incontinence. St. Chrysostom, commenting on the words of the Apostle, says: "Castigat im-

pudicos apostolus, dum non eos permittit post secundos nuptias ad ecclesiae regimen dignitatemque pastoris assumi." St. Hieronomus, who spent a great portion of his life among the Greeks and was imbued with their severer interpretations, likewise comments on the words of St. Paul. "Quod autem ait, unius vir, sic intelligere debemus, ut non omnes monogamum bigamo putemus esse meliorem, sed quod is possit ad monogomiam at continentiam cohortari, qui sui exemplum praeferat in docendo."[36]

In the Synod of Trullo, in 692 A. D., the privilege was given to priests of the Greek Church of cohabiting with the wives they had married previous to their ordination. Should the wife die, subsequent to the reception of sacred orders, they were forbidden to remarry, under penalty of absolute deposition. In the Council of Trent (Sess. XXIII, c. xvii), we read that those persons who were bigamists, were forbidden to exercise the duties of minor orders, even though, owing to a scarcity of clerics these particular functions of the clerical state were frequently performed by lay persons.

The Western Church adheres to the opinion that the institution of this irregularity was for the reason that in a second marriage the union of the Church with Christ, its spouse, is less perfectly represented. The Western Church, however, admits the secondary purpose of its institution, namely, the presumed incontinency on the part of the bigamist, and his consequent unfitness to discharge efficiently the office of the priesthood, among a people which looked with great suspicion upon a bigamist, and held him in little or no esteem. The division of one body with two, instead of union with one body, is the bedrock of this irregularity. This defect in the perfect resemblance of the second marriage to the great type of marriage gives rise to the irregularity and to the name by which it is commonly known "ex defectu sacramenti." It is not proper that one who has received a sacrament defective in its resemblance to its exemplar, should become a dispenser of sacraments to others.

36 Devoti, Jus Can. Univers. h. t. 21, de bigam.

As is evident from the Pauline injunction, there existed only one particular species of bigamy, in the first centuries, namely, true or real bigamy. It is generally supposed that about the fourth or fifth century a second kind of bigamy was introduced. According to Devoti (can. univ. II, p. 206), a third species was added in the Middle Ages, and which was called similar. Canonists also made a division of bigamy into bigamy from defect and bigamy from crime. Bigamia simulitudinariia was generally considered as bigamia ex delicto, although many, as St. Alphonsus Theologia Moralis Compendium (lib. VII, n. 436), held that all three were ex defectu sacramenti.

Real bigamy demands that a person has contracted a second valid and legal marriage. It does not matter whether the marriage takes place before or after baptism, or one before, and the other after; the second marriage, in any event, imperfectly symbolizes the great sacrament of Christ in the Church.

Interpretative bigamy exists when a man consummates an invalid marriage with a woman who is married, but separated from her husband, or with a widow known by her former husband, or by another man, out of wedlock; or who has carnal intercourse with his wife after she has been corrupted by another man.

A man becomes guilty of simultaneous bigamy who, after taking a solemn vow of chastity in religion, or by receiving sacred orders, attempts and consummates marriage.

In the new Code, of Canon Law, bigamists are those men who successively contracted two or more valid marriages.[37] This explanation has clarified the exact nature and extent of this irrregularity.

This irregularity is removed neither by Baptism nor religious profession but by dispensation. The dispensation does not efface the defect in sacrament, but the unfitness arising therefrom.

37 Canon 984 n. 4.

VI.

IRREGULARITY ARISING FROM LOSS OF GOOD REPUTATION.

This irregularity was introduced by St. Paul the Apostle. "For a bishop must be without crime, as the steward of God." "Moreover he (bishop) must have a good testimony of them who are without: lest he fall into reproach and the snare of the devil."[38] The reason underlying this precept is readily apparent. Since clerics must excel in integrity of life and be an example to the lay body, it is necessary that their reputation be unassailable. In the early Church, those who by reason of some grave crime had been subjected to public penance, even after their reconciliation, could not be admitted to the clerical state.[39] This practice was closely connected with *infamia ex delicto*. In this the Church followed the old Roman Law and to some extent the laws of the old Germanic peoples.[40] Subsequently, in the gradual development of the Church, a distinction was made between irregularities incurred by the commission of certain crimes even though occult, and irregularity which was incurred by the loss of reputation as the result of certain crimes.

This irrregularity is frequently called the irregularity arising from infamy. When a loss of good reputation has been brought about by regular legal process, terminating in conviction in a court of justice, no injury is done to the delinquent by publishing the fact. The same thing can be said when the scandalous repute in which a person is held is a matter of common knowledge. The Canon Law seems to require a pre-existing public opinion against an individual before the investigation in a judicial inquiry can be narrowed to any particular person. Infamy in the canonical sense is defined as the privation

38 Epistle to Titus, I., VI. I. Tim. III, 7.

39 Cf. Siric. epist. I ad Himer. cap. 13., Kober, D. Deposit. p. 70. Gasparri, op. cit., N. 186.

40 Cf. C. 2. (cap. Angilr.) c. 17. C. VI. q. 1. Pseudo-Steph. R. I. 87, in Sext. secundum analog. Schmalzg. op. cit. n. 170. Phillips, op. cit., p. 538. Wernz, op. cit., cap. IX. n. 129.

or lessening of one's good name by reason of the commission of certain crimes.

Infamy is twofold in species, infamy of law (*infamia juris*), and infamy of fact (*infamia facti*). Infamy of law is contracted when the law itself attaches this juridical ineligibility and incapacity to the commission of certain crimes.

Infamy of fact is incurred when a person has lost his good reputation, with pious and sensible Catholics, by reason of some more grievous crime which he committed, or by reason of a wicked mode of life. The ordinary is the judge in cases of infamy of fact.

Neither kind of infamy will affect the person's blood relations, or relations by marriage, except in the case where the pastor keeps in his house relations who lead a scandalous life, whom he is bound to eject from his house, and if he does not do so, after having been warned by the Ordinary, he may be derived of his parish.[41] This is one of the reasons why the pastor of an irremovable parish may be ousted from his office.

Infamy of law is incurred *ipso facto* by the following:

(1) Catholics who formally join a non-Catholic sect, or publicly adhere to it.[42] There must be then an absolute defection and adoption of another religion before one can be called irregular as a result of this infamy. Mere attendance in a sectarian church, other than Catholic, is not the formal adherence to another sect of which the new law speaks.

(2) Desecrators of consecrated hosts are likewise *ipso facto* declared infamous, and incur the resultant irregularity.[43] The reason for this is apparent and does not require further comment.

(3) Persons who dishonor the memory of the dead by thefts or other crimes committed on the bodies or the graves of the deceased.[44] Since it is the belief of Catholics that the bodies of the dead will one day be again called to life and rise, it has always been the object of the

41 Canon 2117, n. 3.
42 Canon 2314, sc. 1.
43 Canon 2302.
44 Canon 2328.

greatest solicitude to protect the remains of the deceased.

(4) Those who lay violent hands on the Roman Pontiff, Cardinals, or Papal Legates.[45] This irregularity was considered to affect the children and grandchildren, prior to the new law.[46]

(5) Those who fight a duel and their official witnesses.[47] A contest with weapons is essential to the conception of a duel. Further, the contest must take place by agreement, and the weapons used must be capable of inflicting wounds. Finally, it is essential to a duel that it take place on account of some private manner, such as wounded honor. Although generally demanded by custom, similarity of weapons is not essential, neither are witnesses, seconds, etc.

Duelling is contrary to the ordinances of the Catholic Church, and of most civilized countries. The Council of Trent plainly indicated that duelling was essentially wrong and since then theologians have universally characterized it as sinful and reprehensible. However, there were always a few scholars who held the opinion that cases might arise in which the unlawfulness of duelling could not be proved with certainty by mere reason. Pope Benedict proved the untenableness of this opinion in his Bull issued in 1752, "Destabilem." In this he condemned the following propositions: (A) A soldier would be blameless and not liable to punishment for sending, or accepting a challenge, if he would be considered timid and cowardly, worthy of contempt, and unfit for military duty, were he not to send a challenge and accept such, and who would for this reason lose the position which supported him and his family, or who would be obliged to give up forever the hope of befitting any well earned advancement. (B) Those persons are excusable who, to defend their honor, or to escape the contempt of men, accept, or send, a challenge, when they know positively that the duel will not take place, but will be prevented by others. (C) A general or officer who accepts a challenge

45 Canon 2343.
46 Cf. Cap. III, de poenis in Sext. Boenighausen op. cit., p. 158.
47 Canon 2351 n. 2.

through fear of the loss of his reputation and his position does not come under the ecclesiastical punishment decreed by the Church for duellists. (D) It is permissible, under the general conditions of man, to accept or send a challenge in order to save one's fortune, when the loss of it can be prevented by no other means. (E) This permission claimed for natural conditions can also be applied to a badly guided state in which justice is openly denied by the remissness or malevolence of the authorities. Like his predecessors, Leo XIII, in his letter "Pastoralis Officii," of 12th September, 1891, to the German and Austro-Hungarian bishops, laid down the following principles: "From two points of view the Divine law forbids a man as a private person to wound or kill another, except when he is forced to do it in self-defense. Both natural reason and Holy Scriptures proclaim this law."

The intrinsic reason why duelling is wrong is that it is an arbitrary attack on God's right of ownership, as regards human life. Only the owner of a thing has the right at will to destroy it, or to expose it to the danger of destruction. But man is not the master and owner of his life; it belongs, instead, entirely to his Creator. What is said of one's own life applies also to the life of one's fellowman. Every man has the right in case of necessity to defend himself against an unlawful attack on his life, even if it cost the life of the assailant, but apart from such defense no man has the right, as a private individual, to injure the life of his fellowman, or, at pleasure, to expose his own to similar danger. It is easy to see that a duellist exposes unjustifiably both his own life and that of his fellowman, consequently is guilty of a wrongful assumption of the right of God, the Lord of life and death. The conclusion, then, to be drawn is, that whoever is killed in a duel is indirectly guilty of self-murder, because he has for no justifiable reason risked his life, and whoever slays his adversary in a duel is guilty of unjustifiable homicide, because he has taken the risk of causing death, without any right to do so. This holds true even though he did not intend the death of his enemy. The reason, then, for declaring duellists guilty of infamy *ipso facto* is evident.

The new law states that not merely the participants in the actual combat of a duel are to be declared irregular, but also their official witnesses. Witnesses is here used in the sense of those fostering or abetting such an action, as well as the arbiter, seconds, etc.

(6) The following, moreover, incur infamy of law *ipso facto,* those who attempt a second marriage, even a so-called civil marriage, while their lawful husband or wife is living.[48] This is a species of infamy which was seldom or never found in the complications of Canon Law existing before the Code. The Church ever solicitous to preserve the sanctity of marriage, wished to prevent the defection of the husband or wife from their lawful consorts. A person, as is patent, who attempted marriage before a sectarian minister, would also incur this infamy.

(7) Finally, we find that in the new law the following are *ipso facto* infamous, and, therefore, irregular for the reception of the clerical state. Lay persons who have been in a lawful manner condemned for crimes of impurity with minors under sixteen years of age, or for an assault upon women. Likewise, those lawfully condemned of the crimes of sodomy, bawdry and incest.[49] In the old law, the only crime that rendered a person infamous was the rape of a woman for the cause of marriage. Those who aided or helped in any manner incurred the same punishment.[50]

We find that in the new law no mention is made of the accomplices and abettors of heretics. These were infamous in law *ipso facto,* before the appearance of the new Code of Canon Law. Moreover, the omission of those who were condemned to the triremes (a system of punishment in which those guilty of certain crimes were compelled to work as oarsmen, and in which the culprit was usually confined in the hold of the vessel until the term of imprisonment elapsed) is to be noted.[51]

48 Canon 2356.
49 Canon 2357.
50 Council of Trent, Sess. XXIX, cap. 6, de reform.
51 Cf. decretum Urbani VIII, 4th. Jan., 1635. Gasparri, op. cit., N. 465. Schmalz, I. V., t. 7, n. 123.

VII.

Christ, the Master, taught mildness and mercy not only by word, but by example. "Take up my yoke upon you, and learn of me because I am meek and humble of heart; and you shall find rest to your souls."[52] It is only befitting, therefore, that priests of the new law should imitate the great exemplar. St. Paul, when he used the expression, "non percussorrem," in regard to the mode of life of a bishop and deacon, wished to emphasize the teaching of our Lord.[53] The Church, in the early centuries, debarred from the clerical state all those who had caused the effusion of another's blood even though they had done so inculpably.[54] Consequently, the custom arose of declaring soldiers irregular who voluntarily offered their services in a just offensive war, and who killed or mutilated another in that war. One who engaged in a defensive warfare voluntarily, provided the cause was just, did not incur this irregularity. It was necessary to have killed or mutilated another personally, so that even though one led other men into battle and exhorted them by words of inspiration he did not incur this irregularity.

The new law makes no mention of the former irregularity or defect arising from voluntary service in an offensive war, which is just. In a war which is known to be unjust, those who volunteer for service and are instrumental in killing others may be considered as voluntary participants. In this case, they would be irregular as a result of the commission of a crime of voluntary homicide. Should they be forced to take part in such a war, they could not be called voluntary participants.

At present, the following alone incur the irregularity *ex defectu lenitatis*. (A) A judge who has pronounced the sentence of death against some individual brought to trial. (B) Persons who held the office of executor, and who, of their own accord, undertook the office of immediate assistants in the execution of a death sentence. Po-

52 Math. XI-29.
53 I Tim. III. 3; Tit. I-7.
54 Cf. c. 64. Apost. Conc. Tolet. IV, a. 633, D. 51, etc.

licemen and others that might be ordered to assist and help in the execution of a criminal, are not voluntary assistants.[55]

Several conditions are necessary in order that a judge contract this irregularity. (a) The judgment itself must be a just one, otherwise, the person does not contract the irregularity *ex defectu lenitatis*, but that which arises as the result of voluntary homicide (*ex delicto homicidii*). (b) It suffices that the sentence of death be pronounced, consequently, if the criminal should, by some means escape, or have the sentence commuted, it would not relieve the judge from the irregularity. (c) The judge must act by public authority, since one who kills another or causes another to be killed by private authority incurs the irregularity *ex delicto homicidii.* (d) He must actually pronounce the sentence of death.

It was the custom even in the early days of the Christian era to exclude men from the reception of orders who by reason of certain crimes were considered undesirable candidates.[56] At an early date moreover, those who had been subjected to a public penance as the result of certain crimes, whether notorious or secret, were not allowed to receive orders, if they already had received some orders they were not to be advanced farther. Gradually by dint of various circumstances the practice of performing public penance disappeared, and sins of whatsoever nature were atoned for by private penance.

In "Corpus Juris Canonici" we find for the first time a marked differentiation between public and private crimes, in so far as the former produced irregularity while the latter did not.[57]

55 Canon 984 n. 6.

56 Can. Apostol. 60.; Origenes, contra Cels. I, III. cap. 51. Migne, de irregularitatibus, P. G. XI. 987. C. 9, 10. Council Neacaesar, (a. 300-306). Concil. Epaon. (a. 517.), etc.

57 C. XXXII, No. 3. d. 1.

CHAPTER IV.

IRREGULARITIES ARISING FROM CRIME.

This interpretation of an irregularity ex delicto was subsequently changed. Only those crimes whether they were public or occult, which were expressly mentioned in the law were capable of producing this species of irregularity. It might be noted here that crimes to which irregularity is attached on account of infamy do not make a person irregular if they remain secret, while the other crimes mentioned in law do produce irregularity whether they be public or occult provided the other conditions are fulfilled. This is the present discipline of the church, as found in the new law. "No perpetual impediment, called in law irregularity whether ex defecto or ex delicto, is contracted unless it is expressly contained in the following canons."[1]

IRREGULARITY ARISING FROM APOSTASY, HERESY AND SCHISM.

Apostates from the faith, heretics and schismatics are irregular as a result of their crime.[2]

Apostacy, in its etymological sense, signifies the giving up of a particular state in life, and he who embraces such a state cannot leave it, therefore without becoming an apostate. Benedict XIV divided apostasy into three classes: (A) Apostasy from the faith, or *perfidiae*, when a Christian abandons his faith entirely; (B) Apostasy from orders, when a cleric deserts his state of life, and (C) Apostasy from religion, when a religious deflects from his religious life. The Gloss on title IX, Chapter V of the fifth book of the Decretals of Gregory IX has a further division of apostasy: apostasy *inobedientiae*, disobedience to a command given by a lawful superior, and *iteratio baptismatis*, the repetition of baptism, "quoniam

1 Canon, 983.
2 Canon 985 n. I.

reitterantes baptismum videntur apostatare dum recedunt a priori baptismate." As all sin involves a certain amount of disobedience, the apostasy of disobedience does not constitute a specific offense. In the case of *iteratio baptismatis,* the offense falls under the head of heresy, rather than apostasy, and prior to the new Code constituted a specific irregularity. If the name apostasy was given to this particular offense it was due to the fact that the decretals of Gregory IX combine into one title under the rubric, "De apostatis et reiterantibus baptisma," (1)[3] the two distinct titles of the Justinian Code: "Ne sanctum baptisma iteretur" and "De apostatis." (2)[4]

Apostasy from the faith, even before the new law, was the only kind that gave rise to an irregularity. If one should apostatize from the priesthood and attempt to contract and consummate marriage, according to the common opinion of the canonists, in the old law he would incur the irregularity which arose from simultaneous bigamy. However, as we noted in a previous chapter, since this kind of bigamy no longer begets an irregularity, such a one while committing a grave crime and subject to other canonical prohibitions of the Church,[5] escapes the incurrence of this particular irregularity. This was the opinion also in regards to one who deflected from religion.[6]

When an apostate abandons his faith, it does not matter, as regards contracting the irregularity, whether he embraces Islamism, Judaism, Paganism, or simply falls into naturalism and complete neglect of religion.

"Heresy is a species of infidelity in men who, having professed the faith of Christ, corrupt its dogmas."[7] "The heretical tenets may be adhered to from involuntary causes: inculpable ignorance of the true creed, erroneous judgment, imperfect apprehension and comprehension of dogmas. In none of these does the will play an appreciable part, wherefore one of the necessary con-

3 V. title 9.
4 Cf. München, "Das kanonische Gerichtsverfarung.
5 Cod. Jur. Can. can. 985 n. 3.
6 Wernz, op. cit., n. 141.
7 St. Thomas, II-II, Q. xi, a. 1.

ditions of sinfulness—free choice—is wanting and such heresy is merely objective, or material. On the other hand, the will may freely incline the intellect to adhere to tenets declared false by the divine teaching authority of the Church. The impelling motives are many: intellectual pride or exaggerated reliance on ones own insight, the illusions of religious zeal, the allurements of political or ecclesiastical power, the ties of material interests and personal status; and perhaps others more dishonorable. Heresy thus willed is imputable to the subject and carries with it various degrees of guilt; it is called formal because to the material error it adds the informative element of freely willed. Pertinacity, that is, obstinate adhesion to a particular tenet, is required to make heresy formal."[8] The Code does not specify any particular species, hence one who is heretical in any sense, must contract this irregularity.

Schism is, in the language of theology, and Canon Law, the rupture of ecclesiastical discipline and unity, i. e., either the act by which one of the faithful severs as far as in him lies the ties which bind him to the social organization of the Church, and make him a member of the mystical body of Christ, or the state of dissociation or separation which is the result of that state. In this etymological and full meaning, the term occurs in the books of the New Testament. By this name, St. Paul characterizes and condemns the parties formed in the community of Corinth, "I beseech you brethren.....that there be no schisms among you; but that you be perfect in the same mind, and in the same judgment."[9] The union of the faithful, he says elsewhere, should manifest itself in mutual understanding and convergent action similar to the harmonious cooperation of our members which God hath tempered, "that there might be no schism in the body."[10] Thus understood, schism is a genus which embraces two distinct species; heretical or mixed schism and schism pure and simple. The first has its source in heresy or is joined with it, the second which most theo-

8 Catholic Encyclopedia, art. Heresy.
9 I. Cor. I, 12.
10 I. Cor. XII, 25.

logians designate absolutely as schism, is the rupture of the bond of subordination without an accompanying persistent error, directly opposed to a definite dogma. Schism does not necessarily imply adhesion either public or private to a dissenting group, or a distinct sect, much less the creation of such a group. Anyone becomes a schismatic who, though desiring to remain a Christian, rebels against legitimate authority, without going as far as the rejection of Christianity as a whole, which would constitute the crime of apostasy. It must be assumed that the Code, when it mentions schism in general, includes every species. Consequently a person is irregular who could be termed a schismatic in any sense of the word.

Since perpetuity is an essential characteristic of irregularity,[11] an apostate, heretic or schismatic, even subsequent to his conversion, remains irregular, and must obtain a dispensation before he can be advanced to orders, or exercise the same.

II.

IRREGULARITY FROM THE ABUSE OF BAPTISM.

In the old law, the subject of this irregularity was a cause of frequent disputation.[12]

Baptism holds the first place among the sacraments, because it is the door of the spiritual life. By it we are made members of Christ and incorporated with the Church. Baptism once validly conferred, can never be repeated.[13] This has been the constant teaching of the Church, both Eastern and Western, from the earliest times. On this account, baptism is said to impress an ineffaceable character on the soul, which the Tridentine Fathers call a spiritual and indelible mark.[14] In consequence of this, the unconditional reiteration of bap-

11 Canon 983.
12 Boening, Pars II, cap. I. n. 1.
13 Hebr., VI, 4.
14 Council of Trent, Sess. VII, can. IX.

tism, knowingly and willingly, constituted an irregularity in the old law.[15] It affected the person thus attempting to re-baptize, and the recipient, and the public assistants, e. g., the acolyte or deacon.[16]

Three conditions were necessary to constitute this irregularity, culpability, publicity and an absolute conferal of the sacrament.

Many canonists held that the same irregularity was contracted by those who conferred conditional baptism, when a prudent doubt that the first baptism was valid, could not be had.[17] However, many denied this, because the institution of this irregularity was directed against re-baptism. They maintained that in conditional baptism the crime of heresy was absent.[18]

Where sin was not committed, this irregularity was not incurred, consequently infants and children who acted unknowingly and unwillingly were unable to be affected by this irregularity.[19]

The new law of the Church does not mention this irregularity, consequently it is non-existent. At the present time, when the administration of the sacraments is so safeguarded, it is not likely that a valid baptism could be reiterated, knowingly and willingly.

The Church distinguishes between the ordinary and extraordinary minister of baptism. The ordinary minister of solemn baptism is first the bishop and, second, the priest. By delegation, a deacon may confer the sacrament solemnly, as an extraordinary minister. In case of necessity, baptism can be administered, lawfully and validly, by any person whatsoever who observes the essential conditions, whether this person be a Catholic, infidel or Jew.

In the Code, we find that those are irregular *ex delicto*, who, outside the case of extreme necessity, allow themselves to be baptized by non-Catholics.[20]

15 Wernz, op. cit., N. 135.
16 Ibid., N. 135.
17 Benedict XIV, De synodo, I. 7, c. 6, n. 3.
18 Gasparri, op. cit., vol. I, n. 329. D' Annibale, Summula, I n. 410; Noldin theol. Mor., vol. I, n. 131.
19 Noldin, op. cit., vol. I, n. 132.
20 Canon 985, n. 2.

Many cases of extreme necessity can be conceived. It is not necessary that a man be in imminent danger of death, the mere fact that he is going to face death, and a Catholic cannot be had, is sufficient to constitute a case of extreme necessity.

It does not matter whether the baptism performed by a non-Catholic be private or public, the offense constitutes an irregularity.

Prior to the appearance of the Code, the law was somewhat more specific inasmuch as the incurring of this irregularity was restricted to a person who allowed himself to be baptized without necessity by a heretic.[21] The new law, by the innovation of the word non-Catholics, wishes to include all those outside the fold of the Catholic Church.

III.

IRREGULARITY ARISING FROM THE ATTEMPT TO MARRY, WHEN THIS IS IMPOSSIBLE BY REASON OF CERTAIN IMPEDIMENTS.

We now come to the consideration of an irregularity which was introduced for the first time in the new Code of Canon Law. There we find that those are irregular *ex delicto* who have made an attempt at marriage, or only went through a civil contract of marriage, while they were already lawfully wedded, or in sacred orders, or under religious vows, even though these be simple and temporary, likewise those who attempt marriage with a woman bound by the same vows (or with a woman bound by a valid marriage bond).[22]

The indissolubility of the marriage contract is founded on the requirements of divine law.. A valid marriage, once it has been ratified and consummated, cannot be dissolved by any human power, or any cause except death.[23] This canon merely reiterates the constant

21 Wernz, op. cit., n. 134. Suarez, op. cit., n. 14.
22 Canon 985 n. 3.
23 Canon 1118.

teaching and discipline of the Church. A validly married man commits a grave fault when he attempts a second valid marriage, and is, as stated above, irregular. This attempt may be made in various ways. He may deceive the priest as to the existence of a former marriage, or may resort to other means less honorable. The Code specifically states that even if he attempt a civil ceremony he contracts the irregularity.

A marriage is invalid when attempted by clerics in sacred orders,[24] and those who attempt such a marriage are irregular. In the Western Church, the major or sacred orders, are the priesthood, the diaconate, and the sub-diaconate. The reception of any of these orders constitutes a diriment impediment to marriage. This has been the discipline in the Latin Church, since the second Latern Council, in 1139.

Marriage, when attempted by religious who are bound by solemn vows, or by simple vows which have an annulling power by special disposition of the Holy See, is null.[25] Marriage is forbidden to those who take the simple vow of virginity, or of perfect chastity, or of not marrying, likewise to those who vow to receive Holy Orders, or to embrace the religious state. Simple vows do not invalidate the marriage, unless the Holy See has attached this annulling power to it.

When a religious joins a community, he surrenders himself, as it were, with the object of striving therein for his own sanctification, and for that of the members of the community. This surrender of one's self is distinct from the taking of vows, although both are accomplished by a simultaneous action. When one surrenders himself he does so to the community, when one takes his vows, he makes them to God. The profession of a religious may be either perpetual or temporary, solemn or simple. It is perpetual when the vows taken bind for life, temporal, when they bind only for a definite period of time. It is solemn or simple according as the vows are solemn or simple. The solemnity attached to a vow

24 Canon 1072.
25 Canon 1073.

is due to ecclesiastical legislation. The Church has decreed that some vows should be solemn and that as such they should be endowed with certain features or qualities which do not belong to simple vows. These qualities are: (A) Solemn vows enjoy greater stability because the Church more rarely dispenses from them.[26] (B) While all vows bind to the extent of making an act which is contrary to them illicit, solemn vows produce another effect by making a contrary act also invalid. A religious attempting marriage, even if only bound by a simple, or temporal vow, while his marriage would indeed be valid, commits a grave wrong, and would be irregular should he subsequently desire to be advanced to the clerical state. The same irregularity is incurred by men who should attempt marriage with a woman, whose lawful husband is still alive, or with a sister who is bound by either perpetual or temporary vows.

IV.

IRREGULARITY ARISING FROM HOMICIDE AND THE PROCUREMENT OF ABORTION.

It was the desire of the Church, from the earliest stages of her existence, to preserve the members of her clergy "without crime," and "irreprehensible."[27] We find, consequently, that the early Church enacted canons which not merely denied access to orders to those guilty of the crime of homicide, but further prohibited those who had received orders the exercise of their office.[28] Since priests of the new law ought to be imitators of Christ, the Prince of Peace, it is but befitting and proper that they be debarred from the unbloody sacrifice of the immaculate Lamb, who themselves have dared to shed human blood.

26 Wernz, op. cit., Vol. III, n. 677. Vol. IV. n. 381; Vermeers ch. Vol. I, n. 327-329.

27 St. Paul to Tit. I, 6.

28 Cf. de clericis percutientibus fideles vel infideles, c. 28, Apostol. c. 7. D. 45; de prohibit, a clericis effusione sanguinis etiam hostium civitatis obessae. c. I, Conc. Ilerd. anno 524, etc.

This irregularity is incurred by voluntary murderers, and by those who procure abortion, if effective, and all co-operators.[29]

Homicide in general signifies the killing of a human being. It includes both intentional and unintentional killing.[30] In practice, the word generally means the unjust taking away of human life, perpetrated by one distinct from the victim, and generally acting in a private capacity. He incurs the same irregularity who, in an unjust attack upon an innocent person, inflicts a grievous injury from which the victim subsequently dies. In such a case, the fact that the unjust aggressor should repent before the death of the innocent party has occurred, does not excuse him from incurring the irregularity.[31]

Homicide is said to be necessary when a person, to preserve his own life, limb, or chastity, kills an unjust aggressor. A greater value must be placed upon the life of the innocent party in such a case. He who kills another in self defense is not guilty of sin, nor does he contract an irregularity as a result of his action. We find this teaching thus enunciated C. 6, D. 50. "Idem (id est, nullam irregularitatem incurrere) de illo censemus qui mortem aliter vitare non valens suum occidit vel mutilat invasorem." In the antient law moreover, we find that such a one could exercise those orders he had already received, but required a dispensation to be advanced to higher orders.[32]

A person who, in defense of an innocent party, is forced to kill the unjust aggressor, is not morally culpable nor does he contract an irregularity. This is the common teaching of canonists who treat of this particular eventuality.[33]

The right to self-defense is not annulled by the fact

29 Canon 985, n. 4.
30 Boenniugh, op. cit., fasc. II, p. 5 sq., D' Annibale op. cit., P. I, n. 421, sq. C. of Tr. Sess. XIV. cap. VII, de ref.
31 Gasparri, op. cit., n. 415.
32 C. 6, D. 50.
33 Schmalz, I, XII, n. 36; Pirhing, n. 77, 81; Reiff, n. 146, 154; D'Annibale, I, n. 424.

that the unjust aggressor is not responsible. The absence of knowledge saves him from moral guilt, but it does not alter the character of the act considered objectively; it is an unjust aggression and, in the conflict, the life assailed has a superior juridical value.

Many contend that should one fatally wound another who was subsequently killed by a third person, acting independently, he would not be irregular. Faganus denies this [34] and his opinion is borne out by other canonists. In this case, the incurrence of irregularity is at least doubtful. If a doubt exists as to whether the first assault caused or accelerated the death of the innocent party, the aggressor could not be excused from contracting the irregularity.[35]

The following morally concur in voluntary homicide and contract irregularity: Those commanding, advising, failing to prevent, and giving assent to such an action.

A person commanding the death of an innocent party is guilty of homicide and was irregular, in the ancient law, according to the accepted view of the canonists. This discipline was introduced by Boniface VIII. "Is qui mandat aliquem verberari licet expresse inhibeat ne occidatur ullatenus vel membro alique mutiletur, irregularis efficitur, si mandatarius, fines mandati excedens, mutilat vel occidat: cum mandando in sulpa fuerit et hoc evenire posse debuerit cogitare."[36]

In the gloss of Boniface, we find the following legislation: "Homicidium committitur facto, consilio praecepto, et defensione.....Et sic distingue circa hanc materiam; aut committitur homicidium voluntate, aut casu aut necessitate. Si voluntate quod fit tribus modis facto, praecepto, et concilio, et lingua sive adhortatione. In quocumque ipsorum casuum quis committ homicidium, non solum non debet promoveri, sed in perpetuum debet deponi; et etiamsi paganum interfecerit, irregularis efficitur, sive Saracenorum."[37]

34 Faganus, in comm. cap. 18, De homicidio.
35 St. Alph. VII, n. 368; Suarez, disp. XLIV, sect. III, n. 5.
36 C. III, X, de homicidio, I, 111.
37 C. VI, II, de homicidio, I, III, in VI°.

In the Code of canon law[38] we find that those who agree to co-operate in the same crime by united physical action are all held equally guilty, unless the circumstances increase or diminish the culpability of one or the other.

In an offence which of its very nature requires an accomplice, both parties are held equally guilty, unless the circumstances prove the contrary. Many cases can be conceived in which an accomplice would be required to commit an act of homicide. The co-operation on the part of the accomplice must be of such a kind that he may be justly reputed as the co-criminal in the act of murder.[39] It is immaterial whether the act of homicide resulted from the physical or moral co-operation of the accomplice, as would be implied by physical acts of violence in the former case, or a mandate or advice in the latter. If assent be of such a character as to involve physical participation in the contemplated homicide, the person giving such assent is irregular, even though the intended victim be a third party.

Should a number of men conspire to cause the death of some particular individual, all incur irregularity, if the party be executed in accordance with their plans and as a result of their intrigue.

Not only the mandatarius, (or the who orders the commission of an offence,) and who is therefore the principle agent of the crime, but also all who induce another or help him in any way to commit a crime, are "ceteris paribus" equally culpable as the executor of the crime himself, if the deed would not have been committed without their co-operation. Consequently since such persons are equally guilty with the actual murderer they contract irregularity. The inducements or advice must be persuasive or instructive. This would be the case if the advice were insistent, or if one should present various arguments for the perpetration of such an act, or if one

38 Co. Jur. Can. canon, 2209.
39 C. I, X de cond. infidelum, III, 33.

should indicate the mode of committing homicide with impunity.[40]

Such a one is the true moral cause of homicide, as may be gathered in C. 2, X, de clerices pugnantibus in duello, V, 14. "Homicidium autem tam facto quam praecepto, sine defensione non est dubium perpetrari.....Qui vero se asserunt animum regis inflammasse ad odium, unde homicidium fuit secutum, dure et aspere, sed non ita, severe sunt puniendi; nisi forte ipsum ad illud homicidium suis suggestionibus provocasset."

If a person who had no part in the actual murder, and who was not a co-criminal in the conspiracy, should secrete the body of the victim, he is not irregular, even though he does after a manner concur in the homicide. Various motives may actuate such a person, for instance, the desire to protect the murderer from being reprehended.[41]

In the event that a person provokes another to anger, and kills him in a resultant conflict, the incurrence of irregularity is doubtful. In this case according to Suarez,[42] a dispensation ad cautelam should be obtained.

If one should simply say to another: "Your friend has offended against you, therefore kill him," the existence of an irregularity would at least be doubtful. The reason is that in such cases it is extremely difficult to prove that a suggestion of this kind would cause any one to commit actual murder.

He who ceased to co-operate in a crime by timely withdrawal from all participation, is freeded from all responsibility, even though for reasons of his own, the executor of the crime perpetrated the deed; if he did not completely withdraw his influence, his retraction diminishes but does not take away responsibility altogether.[43] Consequently one who would refuse to co-operate in the actual commission of a murder, but allowed others to be influenced by his tacit consent is not free from all re-

40 Suarez, 1. c. N. 18; Gasparri, op. cit., N. 421.
41 Gasparri, op. cit., N. 428.
42 Suarez, disp. XLVI, sect. VI, N. 10. sq.
43 Cod. Jur. Can. can. 2209, n. 5.

sponsibility, and the incurrence of irregularity is at least uncertain. The revocation must be effective, hence proper means must be employed to deter a person from acting on the earlier suggestion, e. g. effective contrary persuasion.

He who co-operates in a crime by neglect of his duty is held responsible to a degree proportionate to his obligation of preventing the crime.[44] One who is merely bound by charity to prevent the death of another is not irregular. If one who is bound by justice, with malice and forethought, fails to prevent the death of another, he becomes irregular.

Praise of the actual fulfillment of a crime, participation in its fruits or concealing the delinquent, and other actions following after the crime has been accomplished, may constitute new offenses, namely if these actions are punished in law by penalties, but unless there is a pre-existing agreement with the offender about such actions, they do not import responsibility for the crime.[45] Consequently persons concuring in an act of homicide in this manner would contract irregularity, only in the case where there had been a previous agreement or intrigue.

According to Gasparri,[46] if the one commissioned to perpetrate a murder should himself be slain, either by the intended victim, or by an officer of the law, or an accidental defender of the victim, the one who ordered such an attempt incurs irregularity, since he is the true and real cause of the resultant death.

It is never allowed directly to kill an innocent party, that is, it is unlawful to kill the innocent when the death of such a one is intended, or when it is intended as a means to attain some other object. The direct killing of an innocent person is to be reckoned among the most grievous crimes, and the irregularity ex homicidio in such a case is always present. It does not matter either as regards the malice of the act, or as regards the con-

44 Cod. Jur. Can. can. 2209 n. 6.
45 Cod. Jur. Can. can. 2209, n. 7.
46 Gasparri, op. cit., N. 421.

tracting irregularity, whether one should accidentally kill another than his intended victim.[47]

Canon law has always forbidden clerics to shed human blood. Capital punishment has always been the work of the state and not of the church. Even in the case of heresy, of which non-Catholic controversialists make so much, the function of ecclesiastics was restricted invariably to ascertaining the fact of heresy. The punishment, whether capital or otherwise, was both prescribed and inflicted by civil government. Such modes of procedure as lynching are absolutely unjustifiable, and all persons participating in such an action incur irregularity.

It was the common teaching before the new law, that all soldiers who took part in an unjust war and either killed or physically co-operated in the killing of the enemy were irregular. In the new Code of Canon Law the expression voluntary murderers is employed. The interpretation of this is evident. If a soldier volunteers his services in a war which he personally knows to be unjust, and, as a result, kills another, irregularity is incurred. A person forced against his will to participate in an unjust war, cannot be called a voluntary murderer, even though he should be the cause of another's death, nor is he affected by the irregularity.

To accelerate the death of a person who is seriously ill and whose eventual death is morally certain..... as by the injection of a large dose of morphine, is homicide. The mere quality of hastening adds nothing for extenuation, as every murder is merely a hastening of inevitable death. To ease pain is not commensurate with the horrible deordination of taking a human life. A physician is not a public executioner nor a judge, with the power of life and death: his business is solely to save human life and never to destroy it. A doctor who performs euthanasia (acceleration of certain death) is certainly guilty of homicide and incurs irregularity.

One therefore who has killed another, under circumstances that show his act to be a mortal sin, whether he

47 Suarez, op. cit., N. 1, 8; Schmalz., V, XII, N. 237. Gasparri, op. cit., N. 415.

directly, or only indirectly, intended the fatal result, and whether he was the physical or moral cause, contracts this canonical impediment.

Abortion in its general sense is the expulsion of the product of conception, at any period of gestation before the fetus becomes viable. In a stricter sense, it is the expulsion of the ovum before the third month of gestation, as distinguished from miscarriage. The word abortion is used here to signify criminal abortion.

A pathologic condition or an accident may induce abortion. When such an interruption is inevitable, the treatment has moral qualities which involve the mother and the physician. Criminal abortion is never allowed and all male persons co-operating in such an action are irregular. No action is lawful which directly destroys fetal life, and any one who performs such an action *effecto secuto* is irregular. It is clear the extracting of the living fetus, before it is viable, is destroying life as directly as it would be killing a grown man directly to plunge him into a medium in which he cannot live, and hold him there until he expires.

In certain conditions, as when the life of the mother is in evident danger from a uterine tumor, an operation may be permissible, or even obligatory, which has for its direct end the removal of the tumor. This is a case of double effect, where all the requirements are fulfilled.

As regards the co-operation, the same principles hold as were enunciated above. Abortion is homicide and anyone co-operating effectively, morally or physically incurs irregularity.

V.

IRREGULARITY ARISING FROM MUTILATION AND ATTEMPTED SUICIDE.

In the new law we find that the following incur an irregularity *ex delicto:* men who mutilated themselves or others and those who attempted suicide.[48] Mutilation is

48 Canon 985 n. 5.

the amputation of an important member. When a person is weakened in a member as the result of certain diseases, so that he is unable to use it, he is said to be deformed. In order to incur the irregularity the member in question must have a distinct, complete function of its own. To blind a man in one eye is not enough to procure this obstacle to the reception and exercise of orders, the eye must be removed.[49] There may be a grave sin in a marring of any principal member and still there may not be mutilation, as, for instance, to cut off a part of a finger is undoubtedly a grave sin, yet in the opinion of canonists it is not sufficient to produce irregularity.[50]

A notable and effective mutilation inflicted on one's own body is akin to suicide, and when perpetrated on another it is akin to homicide. The dominion over the members of the body, as over the whole body, belongs to God the Creator alone. Man is constituted of parts and members, and if he were master of these, he would have a complete dominion over himself. To destroy a thing is to dispose of it as an absolute master, and to act as one having full and independent power over it, but man does not have power over his life or any of the elements which constitute it.

A direct mutilation has a specific end, or, it may be, a means to attain an end, it is moreover a voluntary action. An indirect mutilation is one in which the mutilation is the natural effect of the act, but the intention is directed toward another end. Such an act is licit provided the usual conditions of double effect are present.

All direct mutilation, unless for the good of the whole body, implies a deordination; it offends against the supreme dominion of God, who reserves to Himself, as Creator, ownership of human life and its organs. As we may not destroy life, which belongs to God, we may not amputate a member to suppress a vital function. The exception which permits us to mutilate a member or organ, is, as we have said, the adequate good of the whole body. The reason for this is that man is the administra-

49 St. Alphon. op. cit., I. c. n. 382.
50 Suarez, De cen., disp. 44, sec. 22.

tor of his members, to the good of the whole person. Each member is not for itself, but for the whole person. We may not castrate a man, or perform vasectomy, to preserve his continence, because there is no immediate subordination and connection between the members of the body and the salvation of the soul.

A eunuch is not irregular, according to the accepted view.[51] It does not matter whether he became afflicted with this corporeal blemish as the result of an injury, or was born with this defect. If he performs such an operation upon himself, or another without sufficient reason he is affected by irregularity.

God has reserved to himself direct dominion over life; He is the owner of its substance, and He has given man only the serviceable dominion, the right of use, with the charge of protecting the substance, that is, life itself. Consequently, an attempt to commit suicide, is an attempt against the dominion and right of ownership of the Creator. To this injustice is added a serious offense against the charity which man owes himself, since by his act he deprives himself of the greatest good entrusted to his care, and the possibility of attaining his final end. For a sane man to deliberately attempt to take his own life, he must, as a general rule, first have annihilated himself in the spiritual life, since suicide is an absolute contradiction to everything that the Christian religion teaches us as to the end and object of life, and except in cases of insanity, is usually the natural termination of a life of disorder, weakness and cowardice.

An action which has some good and immediate important effect is not unlawful, even though the performance of such an action may cause ones death, it being presumed, of course, that suicide is not intended.

We are obliged to take ordinary precautions to preserve our lives and to act otherwise would be tantamount to the actual commission of suicide. There is no obligation to take extraordinary, unusual, or very painful or expensive means to preserve our lives.

51 Wernz, op. cit., vol. II, n. 146. Ferreres, Compendium Theol. Moralis, vol. II, n. 899.

Not every attempt to take ones own life will give rise to this irregularity. The attempt should be gravely sinful, consequently any circumstance that would excuse from mortal sin, would excuse one from the incurrence of this irregularity.[52]

It might readily happen that, as a result of an attempt at suicide, a person would incur other irregularities, as, for instance, the irregularity arising from mutilation, or defect of body.

VI.

IRREGULARITY ARISING FROM THE EXERCISE OF MEDICINE AND SURGERY.

It is forbidden to clerics to practice medicine or surgery, without apostolic induct.[53] Clerics practicing medicine or surgery, in spite of this prohibition, are irregular, if thereby the death of a person is caused.[54]

In the early days of Christianity, it appears that clerics were permitted to practice medicine or surgery with impunity. It is true, that general laws may be found, which forbade clerics to engage in secular pursuits. However, in spite of these general injunctions, it was not uncommon for clerics to practice the arts of medicine and surgery. Abuses undoubtedly arose, and it became necessary for the Church to legislate on the subject. In the fourth century, canons were enacted which condemned the excess of clerics engaged in secular subjects.[55] The custom in monasteries of teaching medicine and public law, was first condemned in the twelfth century.[56] In the *Corpus Juris Canonici*, C. XXXII 3, d. I, may be found legislation which forbids clerics to attend the public lectures in medicine and law, which were given in the universities. The reason brought forward is that clerics who devote themselves to such studies

52 Noldin, op. cit., vol. II, n. 421. Cod. Jur Can. can. 986.
53 Canon 139, n. 1.
54 Canon 985, n. 6.
55 Cf. C. 5, Conc. Claremont, a. 1139; Wernz, op. cit., n. 221.
56 Wernz, op. cit., l. c.

readily lost sight of the purpose for which they were elevated to their state in life. This prohibition however forbade attendance at public lectures, hence clerics were permitted to follow medicine privately, or teach it publicly. The council of Tours issued a like prohibition, in the year 1163,[57] to prevent regulars from departing from their cloisters under pretext of attending university courses, and to keep seculars reminded of their obligation of residence. This law was extended by Honorious III to all ecclesiastics having a church dignity.[58] This discipline was inserted by Boniface VIII in his canonical compilation.[59] This discipline is not binding on those clerics who pursue the studies of medicine and surgery privately. The penalty imposed for violation was excommunication *ipso facto*. The Fourth Council of the Lateran, in the year 1215, forbade to clerics the practice of medicine, in cases of amputation or burning. It would seem that this irregularity is contracted *ipso facto* if death results from the ministration of a cleric. Before the new law, a cleric, according to the common opinion, could, in case of necessity, and where danger of life was not involved, practice medicine, through pity and charity toward the poor, in default of ordinary practitioners. If a death resulted, as a consequence of such practice, the incurrence of irregularity was considered doubtful, and a dispensation *ad cautelam* was obtained.

Regulars living in a missionary country, where doctors are scarce, have, by virtue of the Bull of Clement XII, "Cum Sicut," a. d. 1734, the faculty of practicing medicine. To make use of this privilege, however, they must be skilled in the medical profession, and give their services gratis. They may not practice medicine for the sake of gain and there must always be a dearth of doctors. Regulars who, according to their institute, have care of hospitals, may not exercise the art of medicine outside of their own institutions. It is a rather difficult procedure for a cleric to obtain an apostolic indult to

57 Can. 8, Conc. Thronensis.
58 Wernz., op. cit., n. 221.
59 Wernz. l. c.

practice medicine or surgery. Generally, the ordinary is consulted concerning the skill and qualities of the one seeking such an indult. The lack of lay doctors always plays an important part in the granting of such an indult. An indult to practice surgery is much more difficult to obtain than one for practicing medicine, and is only granted when the applicant is skilled and there is no local surgeon. When such an indult has been obtained, a cleric does not become irregular, even when death results from his administrations.[60]

This irregularity affects clerics alone. Physicians, it is true, desiring to enter the clerical state, must be dispensed ad cautelam, but only by reason of the danger of having incurred irregularity as a result of mutilation.[61]

It might be emphasized that the Code says that death must follow from the exercise of medicine and surgery before irregularity is contracted. Consequently, a cleric could exercise these forbidden arts and be the possible occasion of death to another, however, he does not become irregular until death has actually taken place. In case of necessity and where danger to life is not involved, clerics can practice medicine, through charity and commiseration toward the poor. In cases where a cleric had formerly been a physician, he may not practice medicine, except through necessity, without obtaining a papal indult, which is generally not granted except for an impelling cause. (Bened. XIV, "De Syn. Dioec." I, 3, c. 10).

VII.

IRREGULARITY ARISING FROM THE ABUSE OF ORDERS.

In the new law the following are irregular, by reason of their crime: Men who usurp the exercise of an act of orders, which is reserved to those who have received sacred orders, and also clerics in sacred orders who exercise such an act of major orders after they have been for-

60 Noldin, vol. III, n. 735.
61 Benedic. XIV, "De Syn. Dioec." I, 13, c. 10.

bidden to do so by canonical penalty, either personal, or local, corrective, or punitive.[62]

Mention of this irregularity is not made in the decree of Gratian, or in the decretals of Gregory IX, hence, its exact origin is clouded in obscurity. It is generally assumed that custom introduced this canonical impediment.[63]

In the first place, it may be noted that this irregularity affects not merely those in the clerical state, but laymen as well. Consequently, a layman would become irregular should he take the part of a deacon, or sub-deacon in a solemn mass.

A person, even though only initiated into the clerical state, by tonsure, does not become irregular if, in an urgent case, he acts as subdeacon in a solemn Mass. The reason is that, in a case of necessity, this exercise of sacred orders is permitted to those in minor orders and first tonsure. It is not permitted for such a one to employ the maniple, however, when acting as subdeacon.[64]

A usurpation of sacred orders is required before this irregularity is contracted; consequently one who exercises minor orders which he does not possess does not become irregular, as, for instance, should he bless fruits and bread, practice exorcism, etc. A person acting in such a manner commits a grave sin, indeed, but is not affected by the canonical obstacle

It is necessary according to Nolden,[65] in usurping the exercise of sacred orders which a person does not possess, that he employ solemnly all the reserved ceremonies and peculiar ornaments of that order, before irregularity is incurred.

Solemnly, according to Laurentius, denotes such an action as the consecration of the Eucharist, sacramental absolution, or, if the act is able substantially to be performed by a lay person, the employment of the vestments reserved to one in sacred orders. Consequently,

62 Canon 985, n. 7.
63 Wernz, op. cit., n. 136, note 334.
64 S. C. R., 17 Jul., 1894, n. 3832.
65 Noldin, op. cit., vol. III, n. 678, c.

one acting as a deacon singing the gospel in a solemn mass, with a dalmatic, but without the stole, or one acting as a subdeacon singing the epistle with the tunic, but without the maniple, does not solemnly exercise an act of sacred orders. The Code however does not say that the solemn exercise of orders is required, consequently the opinion of Noldin cannot be upheld.

A priest contracts irregularity who exercises a pontifical function, as to consecrate a church or chalice, confer tonsure or minor orders. Likewise, a deacon who attempts to absolve a penitent, and a subdeacon who attempts to confer baptism solemnly, or who sings the gospel with a stole, or who supplies the ceremonies at baptism. A cleric in minor orders is also irregular who sings the epistle with maniple. The reason of this is that all these exercise a major order which they do not possess.

A simple priest who, without jurisdiction, absolves sacramentally does not incur irregularity. The same is true of a deacon, who, without authority of the pastor, baptizes solemnly or administers holy communion. These do not exercise sacred orders which they do not possess.

The second class of persons who are affected by this irregularity, are clerics in sacred orders. Should such a one exercise an act of sacred orders forbidden to him by reason of an ecclesiastical penalty, he becomes irregular.

In the ancient law, excommunication was of two kinds, major and minor. A minor excommunication was a general prohibition from receiving the sacraments. In order to receive the Eucharist and the other sacraments those who had incurred this penalty had to be absolved therefrom; as it was not reserved, this could be done by any confessor. It was the general opinion that only the violation of a major excommunication gave rise to this impediment. Sacerdotem minori excommunica-tioni ligatum non fieri irregularem celebrando.[66] Gasparri makes the following comment upon this law.[67] "Et

66 In cap. ult. De clerico excomm. in Decreto.
67 Gasparri, op. cit.

proinde supponimus secus esse, si fuerit majori excommunicatione irretus."

Minor excommunication was practically identical with the condition of the penitent in the early stages of the Church's existence, who, before he could be reconciled, was admitted to public penance. Unlawful intercourse with the excommunicated persons gave rise to the so-called minor excommunication. By dint of various circumstances, however, great difficulties arose, especially after excommunications had become so numerous. Martin V, by the constitution, "Ad evitanda scandala," (1418), restricted the aforesaid unlawful intercourse to that held with those who were formally known as persons to be shunned, and who were, therefore, known as vitandi, and with those who were notoriously guilty of striking a cleric. But as this twofold category was in modern times greatly reduced but little attention was paid to minor excommunication, and eventually it ceased to exist after the publication of the constitution, "Apostolicae Sedis". The latter declared that all excommunications "latae sententiae" that it did not mention were abolished, and, as it was silent concerning minor excommunications (by its nature, an excommunication "latae sententiae" of a special kind), canonists concluded that minor excommunication no longer existed. This conclusion was formally ratified by the Holy Office (6, Jan., 1884).

Major excommunication is the only kind which now remains in force, and gives rise to an irregularity, if an excommunicated person in sacred orders exercises his office.

In the new law, an excommunicated priest is prohibited from celebrating the sacrifice of the mass and administering the sacraments and sacramentals, with the following exceptions:

The faithful are permitted, to ask, for any good reason, an excommunicated priest to administer the sacraments and sacramentals, especially when there are no other ministers, in which case the excommunicated priest who is asked to administer the sacraments may do

so, nor is there any obligation for the priest to ascertain the reason of the request.[68] By reason of this canon, a priest who administers the sacraments, under the above conditions, would be excused from irregularity.

The faithful may only in danger of death ask for sacramental absolution from an *excommunicatus vitandus*, as well as from another excommunicated priest whose excommunication was pronounced in the ecclesiastical court by either condemnatory or declaratory sentence, in accord with canons 882 and 2252, and also if there are no other ministers present for the other sacraments and sacramentals.[69] Consequently priest *excommunicatus vitandus*, or one excommunicated by a condemnatory or declaratory sentence, incurs irregularity, if he exercises his office, except in the danger of death, and where recourse can be had to no other minister. Danger of death is to be interpreted in a broad sense, and is not to be confused with the actual moment of death.

(II). An interdict is a censure by which the faithful, though remaining in communion with the Church, are forbidden to participate in certain sacred functions.[70] The prohibition is made either directly, by means of a personal interdict which forbids some particular individual the use of the specified holy things, or indirectly, by means of a local interdict which forbids the administration or reception of some sacraments or sacramentals in certain places. The personal interdict follows the individual wherever he may happen to go; the local interdict does not bind outside the interdicted place; however in that particular place in which it is in force it affects all persons, even outsiders and exempt persons, unless they have a special privilege. The Holy See alone can issue a general interdict, either local for the territory of a diocese or country or personal, for the people of the diocese or country; the bishop (not the ordinary) may issue

68 Canon 2261, n. 1.
69 Canon 2261, N. II.
70 Cod. Jur. Can. canon, 2268.

a general interdict for a parish or its people, and a particular interdict both personal and local.[71]

According to Gasparri,[72] a cleric who violates the prohibition of a local interdict whether general or particular, by performing an act reserved to one in sacred orders, is irregular. The local interdict whether general or particular, does not forbid the administration of the Sacraments, but it does forbid in that place any Divine services or rites with the following exceptions. On Christmas, Easter, Pentecost, Corpus Christi, and the Assumption of the Blessed Virgin Mary, the local interdict is suspended, and only the conferring of orders and the solemn blessing of marriage are forbidden.[73]

A cleric not personally interdicted does not incur irregularity if he violates a local general interdict holding Divine services and sacred functions in any church or oratory, provided this be done privately and behind closed doors, in silence and without ringing of bells.[74]

It is certain that if a cleric personally interdicted, exercises sacred orders, irregularity is contracted.[75] Cardinals do not incur penalties unless they are explicitly mentioned, and the same applies to bishops in reference to suspensions and interdicts *latae sententiae*.[76] It is patent that a cleric affected by a particular personal interdict would contract a twofold irregularity, who would exercise his divine office in a place under interdict, whether the latter be general or particular.[77]

(III). Irregularity arising from the violation of suspension was first decreed about the twelfth century. "Sciturus quod si, suspensione durante, damnabiliter ingesserit se divinis, irregularitatis laqueo se involvit, secundum canonicas sanctiones, a qua nonnisi per Summum Pontificem poterit liberari"[78] In another place of

71 Cod. Jur. Can. canon 2269.
72 Gasparri, op. cit., N. 356.
73 Cod. Jur. can. canon 2270, N. 2.
74 Cod. Jur. Can. canon 2271.
75 Gasparri, op. cit., N. 356.
76 Cod. Jur. Can. canon 2227.
77 Gasparri, op. cit., I. c.
78 C. I, De sent. et re jud., II, IXIV in 60.

the same work we read, "Caveant autem ecclesiarum praelati et judices universi ne praedictam poenam suspensionis incurrant; quoniam si contingeret eos sic suspensos divina officia exequi sicut prius, irregularitatem non effugient juxta canonicas sanctiones, super qua nonnisi per Summum Pontificem poterit dispensari."[79]

Suspension is ordinarily a censure, since it is generally a medicinal punishment, inflicted after admonitions and intended to amend the delinquent, yet it is not necessarily so for it is occasionally employed as a chastisement for past offenses.

Many maintained prior to the new law that only the violation of suspension as a censure gave rise to this irregularity.[80] Others were of a contrary opinion,[81] and some, as St. Alphonsus, drew a distinction.[82] "Si suspensio infligatur per modum statuti aut praecepti ob crimen futurum, vel etiam praeteritum, sed habens tractum successivum." If these conditions were fulfilled according to the tenets of the opinion of St. Alphonsus irregularity was contracted. However they denied the existence of an irregularity,"si suspensio fertur ab homine per sententiam ob meram punitionem criminis omnino praeteriti." There was a very probable opinion at least that a violation of a vindictive suspension did not beget this irregularity.[83] An exception, of course, was made of the case in which a clause is explicitly added, declaring one irregular who violates such a suspension.

In the new law, canon, 987, N, 7., states that clerics in sacred orders who exercise such an act of orders after they have been forbidden to do so by canonical *penalty*, either personal or local, corrective or punitive, incur irregularity.

A lay person or a cleric who, in spite of a censure, would dare to receive tonsure, or be advanced to a high-

79 Ibid.
80 D' Annibale, in comm. const. Apostolicae Sedis, n. 12 and in the Summula, I. n. 357, 386.
81 Suarez, De censuris, disp. XXVI, sect. II, n. 4.
82 S. Alph., VII, n. 314.
83 D' Annibale, I, n. 386; Genicot, theol. moral., vol. II, n. 633, not. 3.

er order, by an excommunicated, suspended, or interdicted bishop, is not irregular, even though grave sin is committed, and the exercise of the received order prohibited. The reason of this is that the individual in question does not exercise a forbidden order. This discipline was introduced by Benedict XIV.[84] "Apud omnes canonistas principii loco est irregularitatem a sole jure et non ab homine induci posse; a jure autem irregularitate quidem afficiuntur, qui contempta, qua ligantur, censura, in suscepto ordine solemniter ministrant; nunquam vero irregulares pronuntiantur qui cum ejusdem censurae vinculo ad superiorem ordinem ascendere prae sumunt. Scimus enimvero non defuisse doctores, quibus visum cum fuerit ascensum ad altiorem ordinem quoddam esse exercitium inferioris ordinis jam suscepti, idcirco docuere irregularitatem a jure in primo casu irrogatam etiam secundum complecti. Sed simul non ignoramus veriorem et communiorem esse sententiam oppositam quae, quamquam sacrilegii reum fateatur, qui sciens se censurae vinculo obstrictum, superioris ordinis gradum audacter conscendit, eum tamen ab irregularitate absolvit."

A cleric exercising sacred orders who is affected by the so-called *suspensus a Deo,*[85] is not irregular. The same is true of a cleric who violates a suspension imposed by reason of some defect of mind or body not blame-worthy. In these cases there is no violation of a penalty.

It was at one time a subject of dispute whether a person himself under censure incurred irregularity, if he should compel another to perform the sacred acts of the ministry. The more accepted opinion holds that such a one is not affected by irregularity, because irregularity is incurred only by the one actually violating a canonical penalty.[86]

84 Benedictus XIV, De syn., XII, III, n. 7.

85 Cf. Faganus, in I. part. tertii Decretal. de cohabit. cler. et mulier. cap. Quaestitum n. 22. Suspensionem Dei vocant, quam affert quolibet peccatem mortale, quod, quamdiu non eluitur, impedit a sacris tum recepiendis tum administrandis.

86 D' Annibale, I, n. 411, n. 26. Suarez, De censuris, disput. XXXIV, sect. IV. Cod. Jur. Can. can. 985 n. 7.

A cleric who performs an act of sacred orders, which is forbidden under penalty of incurring a canonical penalty, is not irregular, even though he sins gravely and is affected by the punishment. A cleric must already be under a canonical penalty, in order to contract this irregularity.[87] The same holds true of a cleric violating a suspension, which evidently is invalid.[88]

A bishop suspended from conferring orders, is not irregular, if he gives tonsure. Likewise a bishop suspended from conferring one specific order is not irregular, if he gives any other order, whether it be higher or lower.

A bishop suspended from the use of pontifical insignia, is irregular if he performs any function *for which the rubrics prescribe such insignia.* This holds even though he perform such a function without his pontifical insignia. The reason is that a suspension from the use of such insignia implies, indirectly and per accidens, a prohibition to perform any function in which the same is wont to be employed. Should a bishop appear in pontifical attire at other functions he is not irregular.[89]

Finally, a cleric must exercise an order in a serious manner and not jocosely. A priest feigning such a violation would be irregular, if the performance of the forbidden act, was not vitiated through lack of intention in the minister. If the act is null through defect of intention, the incurrence of irregularity is at least doubtful, however a dispensation should be obtained.[90]

As the Church cannot deprive a suspended cleric of the power of sacred orders, but only forbids their use, it follows that acts of sacred orders remain valid after suspension. On the other hand, acts of jurisdiction become null and void, after a suspended cleric has been denounced by a condemnatory or declaratory sentence, because the Church has power to deprive one totally of jurisdiction. A priest suspended from the exercise of orders

87 Suarez, I. c., disp. XXXI, sect. I, n. 71. D' Annibale, I, n. 411, n. 24; Gasparri, op. cit. n. 366.
88 Gasparri, op. cit., I. c.
89 S. Alph., VII, n. 314; D'Annibale, I. c. Schmalz., V, XXVII, n. 31; Gonzalez, in comm. cap. 4, De clerico excomm. n. 4.
90 Gasparri, op. cit., n. 370.

would absolve validly, in the sacrament of penance, but is affected by irregularity as the result of such action.

VIII.

NECESSARY CONDITIONS FOR THE CONTRACTING OF IRREGULARITY EX DELICTO.

Irregularities arising from the commission of crime are not incurred unless they are mortal sins, committed after baptism, or in Baptism, as enumerated in canon 985, n. 2, and external acts, whether public or occult.[91]

Therefore every circumstance, which would excuse a person from the commission of mortal sin would excuse him from contracting an irregularity *ex delicto*.

By the word crime, in ecclesiastical law, is meant an external and morally imputable violation of a law, to which a canonical sanction has been attached, at least indeterminately.[92] Crime as here used in the Code however simply denotes a serious offense.

The following are incapable of committing an offense A) those without the use of reason, B) those habitually insane, even though they occasionally have lucid intervals, or appear to be rational on certain subjects; C) a person who became drunk voluntarily is somewhat responsible, but in a less degree than if the same offense is committed by a person fully in control of his senses, unless drunkness was sought deliberately for the purpose of committing the crime, or to excuse it. Should a person violate the law while involuntarily drunk, there is no responsibility at all if the intoxication deprived the person altogether of the use of reason; responsibility is diminished if the use of reason was only impaired. The same is to be said of other similar disturbances of the mind. Debility of mind diminishes the responsibility of an offense, but does not take it away altogether.[93]

91 Canon 986.
92 Canon 2195, n. 1.
93 Canon 2201.

The other circumstances excusing from irregularity have already been noted in Chapter III.

Irregularity *ex delicto* presupposes a grave fault, for the reason that is was instituted, "quasi poena gravissima,"[94] although as noted before, it is not a true and real punishment.

The fault committed must be grave not merely in the internal, but in the external forum. The jurisdiction of the internal forum deals with questions concerning the welfare of individual Christians and with their relation to God. Hence it is also called the forum of conscience (*forum conscientiae*). The church's jurisdiction in the external forum has reference to the matters touching the public and social good of the corporate body. It corresponds, consequently, very closely to the powers exercised by civil magistrates in affairs belonging to their competence. While the external forum may busy itself with the concerns of individuals, it does so in so far as these affect the public good. The Church has declared that irregularity shall accompany the commission of certain external acts, since they affect the good of the clerical state.

Finally, it may be noted that provided the act is external, it does not matter whether the crime is public or occult. Consequently if the individual committing any of the crimes which beget irregularity, were the only one cognizant of such an action, he would still be bound by the ecclesiastical law.

94 S. Alph., VII, n. 348; Suarez, de censuris, disp. XL, sect. III, n. 17; D'Annibale, I, n. 409; Schmalz, V, XXXVII, n. 76; Layman, lib. I, tract. V, pars. V, cap. I. N. 4.

CHAPTER V.

SIMPLE IMPEDIMENTS.

In the new law we find a distinction made between irregularities and simple impediments. This division was adopted by some authors,[1] even prior to the publication of the new law. However, many of the recognized canonists adhered to the older interpretation, and failed to make the distinction as we find it to-day.[2]

The essential difference between irregularity and a simple impediment to ordination consists in this: Irregularity is a perpetual obstacle to ordination and can only cease through dispensation, a simple impediment is of a temporary nature and may cease *ipso facto* without dispensation, when the cause which gave rise to such an impediment no longer exists.

No one but the Roman Pontiff is able to constitute irregularities, for the reason that they perpetually exclude one from the reception of orders. A bishop may for a just cause, and for the good of the clerical state, demand certain qualifications of aspirants to the priesthood, in his own diocese. He may likewise exercise special precaution in particular cases.[3] In the present chapter, we shall confine ourselves to a discussion of the simple impediments found in the new code of Canon Law.

I.

The following are forbidden to be ordained as a result of an existing impediment: **The sons of non-Catholics, as** long as their parents persist in their error.[4] In the old law, this simple impediment was comprehended under the irregularity arising from heresy. Children were held to be irregular as far as the second degree in the paternal

1 Gasparri, op. cit., N. 156.
2 Wernz., op. cit., N. 95, sq.
3 Gasparri, op. cit., N. 478.
4 Canon 987, n. 1.

line, and to the first degree in the maternal line, if their parents were heretical.[5]

Concerning this impediment to orders, Pope Alexander IV legislated thus: "Haeretici autem, credentes, receptatores, defensores et fautores eorum ipsorumque filii usque ad secundum generatonem ad nullum ecclesiasticum beneficium seu officium publicum admittantur. Quodsi secum actum fuerit, decernimus irritum at innane."[6] However this decree was subsequently changed by Boniface VIII, who enacted the following legislation: "Statutum felicis recordationis Innocentii et Alexandrii praed. Nostr., ne videlicet haeretici, credentes, receptatores, defensores et fautores corum ipsorumque filii usque ad secundam generationem ad aliquod beneficium ecclesiasticum seu officium publicum admittantur, quodsi secus actum fuerit, sit irritum at inane, primum et secundum gradum per paternam lineam comprehendere declaramus, per maternam vero primum dumtaxat volumus hoc extendi.[7]

The reason why this impediment was instituted was that the offspring of heretical parents is frequently influenced by the fault of its progenitors.[8]

It does not matter as regards contracting this impediment whether the father or mother of the child concerned is a non-Catholic.

The word "acatholici" comprehends not merely heretics, apostates, schismatics but infidels as well. Consequently a child born of Hebrew parents is affected by this simple impediment. It does not matter, moreover, whether both the parents are in good faith, the impediment is contracted *ipso facto*.

Before the new law canonists generally adopted the view that children were not affected by this impediment, if they were born anterior to the deflection of the parents.[9] It would seem that this interpretation could still be applied to the new law.

5 Wernz, op. cit., vol. III, n. 139.
6 C. IV, de temporibus ordinationem et qualitate ordinandorum, I, 9, in VI°.
7 C. 15, de haereticis, V, 2, in Vi°.
8 Wernz, op. cit., vol. III, n. 139.
9 Ibid.

This impediment ceases, if both parents are converted and renounce their error. Should the parents die in error, it is the common opinion that the children would nevertheless be affected by the impediment.[10]

An illegitimate son of a non-Catholic father or mother is also subject to this impediment, as the law does not distinguish. In the case in which the father or mother is unknown and there is a doubt as to whether they were non-Catholics or not, the child would require a dispensation *ad cantelam* from the irregularity *ex defectu natalium.* The Ordinary, as will be seen in a subsequent chapter, is able to dispense from the doubtful impediment.

On the 16th of October, 1919, a doubt was proposed concerning canon 987. Utrum, ad normam can. 987, impeditis adnumerandus is, cujus pater vel mater tantum est acatholicus, alter parens catholicus. Et quatenus affirmative, an etiam eo in casu, quo matrimonium mixtum datis cautionibus cum dispaensatione in hoc vetito contractum fuit. The response given was: Affirmative in omnibus. (Acta op. Sed.)

II.

Married men, during the time of their marriage, are forbidden to be advanced to orders.[11] Clerics in major orders, are, in the Latin Church, bound to celibacy. Among the major orders are to be enumerated: The Episcopate, the Priesthood, the Diaconate, and the Subdiaconate.[12]

This irregularity ceases, if the marriage is dissolved by the death of the wife and in the case where the marriage remains ratified only, by solemn religious profession. A man converted, is not at liberty by virtue of the Pauline Privilege to be advanced to orders, if the other infidel party should consent to cohabit peacably and should be willing to subscribe to all the conditions required by law, but be unwilling to be converted. If the infidel wife is unwilling to conform to this, the converted hus-

10 Noldin, op. cit., vol. III, n. 679.
11 Canon 987, n. 2.
12 Cod. Jur. Can. canon, 949.

band may be advanced to orders. Another means by which a married man may be advanced to orders is by obtaining a dispensation. This is very seldom granted, and never without the consent express or tacit, of the other consort. This consent must be freely given and definitely established. In the rescript are mentioned the conditions which are to be observed.

A married man who in good faith receives major orders without a dispensation from the Holy See is forbidden to exercise such orders.[13]

III.

In the new law, officials and administrators holding an office forbidden to clerics are not allowed to be ordained, until they have retired from such an office and settled all responsibility arising from the same.[14]

The Church has always been desirous of keeping her clergy free from secular affairs. This desire is based on St. Paul's exhortation to Timothy: "No man being a soldier to God entangleth himself with secular business.[15] As early as the year 348, legislation may be found concerning clerics bound to responsibilities as the result of holding certain offices.[16] "Magnus Episcopus Augustenensis dixit: 'Procuratores, actores, executores seu curatores pupillorum si debeant ordinari' Gratus Episcopus dixit: Si post deposita onera et reddita ratiocinia actus vitae ipsorum fuerint comprobati in omnibus, debent cum laude Dei, si postulati fuerint, honore numerari. Si enim ante libertatem negotiorum vel officiorum fuerint ordinati, ecclesia infamatur, Universi dixerunt: Recte statuit Sanctitas vestra ideoque ita est nostra sententia." (Popes Gregory IX and Gelasius enacted laws upon the same subject).[17] Secular affairs are very apt to cause a priest to estrange himself from his divine vocation. Hence the prohibition of officers, which, in themselves, are not

13 Cod. Jur. Can. canon, 132, N. 3.
14 Canon 987/3.
15 II Tim., II, 4.
16 Canon 8, Council of Carthage.
17 C. I, D. 53 and 54.

incompatible with the dignity of the clerical state, yet, because of their unwholesome effect upon the priestly office, should be accepted only in obedience to the Church. In canon 139 of the new Code, we find that occupations forbidden to clerics may be divided into two classes: such as require an Apostolic indult, and such as merely demand the consent of the ordinary. In number three of the same canon, we find that clerics are not permitted, without the consent of their ordinary, to be managers of business affairs, or of properties which belong to lay persons or necessitate the rendering of an account.

A person exercising an office or administration not forbidden to clerics, may be advanced to orders, even though he may make no renunciation of his position, or settle obligations arising from the same.[18] In the present discipline, clerics are permitted to provide for their relatives, to be administrators of ecclesiastical affairs, to assume control over orphans, widows and such like who especially require the assistance of the Church.

Some authors make a distinction between administrators of public affairs and administrators of the interests of particular persons. They exclude the former from orders, if they have not settled all responsibility arising from their office, but allow access to the latter, even before they fulfill their obligations, provided they resign their position. In this latter case, however, if there is danger of scandal, or other difficulty, the person cannot be ordained.[19] This distinction, however, has no foundation in law.[20] Hence, in general, one engaged in the administration of public or private affairs cannot be ordained until he has rendered an account. A person renouncing an office forbidden to clerics may be advanced to orders, before rendering an account, if, in the judgment of the Ordinary, the creditor has been sufficiently provided for, and there is no danger of a civil procedure which would bring defamation to the Church.[21]

18 Schmalz, I, XXX, n. 3; Reiff, n. 7; Piring, n. 3; S. Alph., III, n. 838.
19 Berardi, tom. IV, p. II, diss. IV, cap. IV.
20 Gasparri, op. cit., n. 553.
21 Schmalz, I. c., n. 4; Piring, n. 3, S. Alph., III, n. 838.

Clerics are forbidden to accept the offices of president, director, treasurer, secretary of banks, even though these be of a charitable or social type (rural or farmers' banks, etc.)[22] The reason of this is that such offices would require the rendering of an account.

The Holy See alone has the power to permit one engaged in a business forbidden to clerics to be advanced to orders before he has settled his responsibilities. This permission is not readily obtainable.[23]

Should such a person be advanced to orders without dispensation, he would sin gravely, but would not contract censure or a new irregularity.[24] A person ordained under these circumstances must, as far as possible settle all responsibility arising from his former office.

A bishop has the power of compelling a cleric to relinquish a forbidden office, should he accept it subsequent to ordination. However before the bishop takes action a cleric exercising such an office is not forbidden to perform the duties of the ministry.[25]

IV.

Slaves, properly so called, are forbidden to be ordained, before they have obtained their liberty.[26]

The discipline of denying access to the clerical state to slaves has existed from the earliest times.[27] The reason of this prohibition is that the state of slavery is not in accord with the dignity of the ministry, and, secondly, the Church is unwilling to ordain a slave unless he has first been manumitted by his master. The Code excludes only slaves properly so called from the reception of orders. In the Roman law, according to Ramsay, this state existed, when a person was subjected, against nature to the ownership of another, either by fact or birth.[28] Servants

22 S. C. Consist., Nov., 18, 1910, Acta Ap. S., II, 1910.
23 Schmalz, I. c., n. ult.
24 Reiff, I, XIX, n. 11; Gasparri, op. cit., n. 555.
25 St. Alph., III, n. 838.
26 Canon 987/4.
27 Cf. Canon 81-Apostol.
28 Cf. Ramsay-Lanciai, Manuel of Roman Antiquities, 1901, p. 134.

were designated *mancipia* when regarded as a piece of property; *venales*, when held as a commercial commodity; *famuli* when considered as domestics; *servi*, when regarded as bound to fulfil the commands and desires of the owner. These words were interchangeable, and indiscriminately employed. They all denote the condition of slavery, properly so called.

From this condition of servitude must be distinguished another, that of *adscripti*, who belonged only to an estate or piece of property and could be sold only with the land.[29] Another class of slaves are called mercenary, or hired slaves.

The Church endeavored always to mitigate the condition of slaves, and admitted them to the clerical state, if they were freed or had obtained the permission of their masters. Slavery, properly so called, has ceased to exist in civilized countries, but flourishes in parts of Africa.

In the present discipline of the Church slaves properly so called are never ordained. They are without that liberty which is necessary to the ecclesiastical state, consequently their condition is unbecoming the clerical life.

V.

Men bound to ordinary military service by the government may not be ordained until the term of their service has elapsed.[30]

Persons subject to a term of military service are very apt to become corrupt in morals. Even after one has obtained his discharge from the service, great caution should be employed before he is advanced to sacred orders.[31]

In Canon Law, clerics enjoy personal immunity from military service.[32] This immunity has existed for centuries and the Council of Trent appeals to civil governments to respect the privilege.[33] The Syllabus condemns

29 Maschat, Praecurusus Juris Canonici, 1760, p. 15.
30 Canon 987, n. 5.
31 Gasparri, op. cit., n. 540.
32 Canon 121.
33 C. of Trent, Sess. 25, c. 20, De ref.

the propositions that this privilege is a favor from the civil authorities, and that it should be abolished.[34] It is but fitting and proper that the clergy be exempt from carrying and using arms. Their mission is one of charity and forbearance, which is alien to bloodshed. The sacredotal character resembles that of Christ, the Prince of Peace, whose hands were unstained with human blood, whose lips spoke nought but love, even for his enemies, and whose heart embraced all.

In most countries, however, the obligation of military service is incumbent upon all, even those who are called to serve at the altar of God. In Italy and France, even priests as well as students in actual preparation for the divine ministry are liable to military service.

A person who, after volunteering his services to the military authority, may not be advanced to orders until the term of his enlistment has expired.

Liability to military service, as stated in the new law, includes also service during the time of peace.

After a soldier has served his term, he is free to be ordained, provided he is not affected by any other irregularity. This is true even though he may be eventually recalled to the army.

The question was proposed to the Committee of Interpretation for the new Code, whether this prohibition is in force, in the case of a person not yet of military age, and yet far enough advanced in studies to receive some orders, or if a person has been called, and, after examination, declared temporarily unfit. Furthermore, it was doubted whether this simple prohibition forbade the reception of major orders only, or included minor orders and first tonsure. The answer was that this simple impediment is in force in the proposed cases, and affected even first tonsure.

VI.

Neophytes may not be advanced to orders until they

34 Syllabus, n. 30, n. 32.

are, according to the judgment of the Ordinary, sufficiently tried in their faith.[35]

The term neophyte is sometimes applied in theology to persons who have lately entered upon a new and higher condition or state of life, as those who have entered the clerical state, made profession in a religious order. In the present Canon, it denotes the state or condition of those in adult life who have recently been converted to Christianity and have been transplanted, by the sacrament of Baptism, into the Church.

Prohibitions were decreed in the earliest days of the Church against neophytes, in this latter sense, being advanced too quickly to the clerical state. St. Paul forbade neophytes to be advanced to the bishopric, "Not a neophyte; lest being puffed up with pride, he fall into the judgment of the devil."[36]

The First Council of Nicaea, in the second Canon, lays down rules on this subject, on the ground that some time is necessary for the state of a catechumen, and for fuller probation after Baptism. This period of probation, as noted in the Code, is left to the discretion of the Ordinary, and will vary with the individual case.

In the old law the condition or state of a neophyte constituted an irregularity, "ex defectu fidei ratione baptismi in aetate adulta recepti."[37]

This prohibition does not affect a person converted to Christianity, if he has been baptized for a long time, and is sufficiently instructed in the faith, and otherwise worthy to be advanced to the clerical state.

VII.

The last class of persons affected by simple impediments are those who have lost their good reputation, as the result of committing some public crime. If in the judgment of the Ordinary they have regained their reputation, they may receive orders.[38]

35 Canon 987, n. 6.
36 I. Tim. III, 6.
37 Gasparri, op. cit., n. 267, cumaliis.
38 Can. 987, n. 7.

In the old law, infamy of fact, as well as infamy of law produced an irregularity *ex defectu.* Infamy of fact is incurred when a person has lost his reputation with reliable and serious minded Catholics, on account of some crime which he committed, or by reason of a wicked mode of life. The judgment in such a case is reserved to the Ordinary.[39]

This prohibition is not a punishment inflicted for a certain crime, but it is the natural consequence of a crime or punishment.[40] It is necessary as stated in the code, that the cause of the infamy be public, for the reason that actual publication among sensible persons from a hidden or occult cause, is unusual. Hence we read in C. 21, D. XXVI: "Propter dicta paucorum eum infamatum reputare non debet (judex) cujus apud bonos et graves laesa opinio non existit"; also in C. 17, X Detemporibus ordinationuum, I-II, "delictum deberet esse ordine judicio comprobatum vel alias notorium; sed etiam opinionem delicti vulgatam apud prudentes et honestas, gravibussue indiciis innixam onerare existimationem, ex dicendis constabit." Consequently the incurrence of this infamy of fact is based on the commission of a public sin, which, having considered the quality and state of the delinquent, and of the community in which he lives, renders him despicable, in the opinion of sensible men.[41]

A person would contract this impediment, who, having been accused of grave crime, was dismissed by the judge, with one of the following sentences: "Novis supervenientibus indiciis," or, "Ex hactenus deductis," or "Non repertus culpabilis," etc.[42] If the one accused of such a crime were declared innocent by the judge, infamy of fact is not incurred.[43] A person under accusation, should not be advanced to orders, pending the decision of the judge, as Gregory IX decreed in Cap. 56, De testibus.

He incurs infamy of fact who receives a just punish-

39 Can. 2293, n. 3.
40 Thesaurus, De poenis, I, XXXIII, ab initio; Suarez, De virtute et statu religionis, lib. IV, cap. LVI, n. 21.
41 Gasparri, op. cit., N. 306; Salm. X, VIII, n. 78.
42 From response of S. C. C. in Vigilieri, 23 Sept. 1613, Beneventura, 16 Agu., 1763, etc.
43 S. C. C. in Bisacciarone, 11th. April, 1742, etc.

ment even from an incompetent tribunal as a cleric, who after being tried by a civil tribunal, was justly punished. Infamy of fact arises in this case not merely from the commission of crime, but from the punishment inflicted. such a punishment would be a sentence of forced labor or imprisonment, etc.

In general, then, every infamy of civil law, penal or otherwise, constitutes an infamy of fact in Canon Law, except in those cases in which "infamia juris," is incurred alike in both civil and Canon Law.

Infamy of fact admits of various degrees, according as the loss of good reputation has been serious or not. The commission of some crimes involves an absolute loss of good reputation, as when a person in any condition of life, and without any extenuating circumstances, commits a grave theft. Other crimes would cause a person of high estate to lose his reputation, but would not produce this effect with others.[44]

Infamy of fact as found in the Code signifies infamy in the proper sense, hence this impediment is not incurred by a person exercising an unpopular office which does not involve the commission of crime, for instance, a custodian of the law, etc.

Since the particular grave and public crimes are not mentioned in law which produce this simple impediment, the ordinary should determine when it affects any particular individual. One guilty of simony, public usuary, etc., would surely incur loss of reputation, if his crime were public.

Infamy of fact ceases when one has shown by a change of life that his repentance is sincere. In the old law a period of two or three years was deemed sufficient to establish this fact,[45] now, however, the matter rests solely with the Ordinary.

Infamy of fact, as is evident, does not necessarily cease with the reception of Baptism.

44 D'Annibale, I, n. 121, note 20; Gasparri, op. cit., N. 308.
45 Cap. II, De clerico non ordinato ministrante.

VIII.

In the old law it was a much controverted question whether ignorance excused a person from contracting an irregularity, on account of crime. It was generally admitted that irregularity arising from defect was incurred *ipso facto*. Most canonists maintained that a knowledge of the ecclesiastical law prohibiting a crime was necessary before irregularity was incurred.[46] Many authors, moreover, were of the opinion that a knowledge of the irregularity attached to the commission of certain crimes was essential to contracting this obstacle.[47] This latter opinion was based on the assumption that irregularity was a punishment in the strict sense, and invincible ignorance, whether of the law or of the fact, exempts one from the penalty which may have been provided by positive legislation. Even vincible ignorance, which is not crass, excuses one from the punishment. This conception of an irregularity, however, as may be seen from the definition we have proposed, cannot be maintained.

In the new law ignorance of the irregularities both *ex delicto* and *ex defectu*, and of the simple impediments, is not admitted as an excuse.[48]

Ignorance in Canon Law may be classified thus: (A) Ignorance of law, when one is unaware of the existence of the law itself, or at least that a particular case is comprised under its provisions. (B) Ignorance of the fact, when not the relation of something to the law, but the thing itself or some circumstance is unknown. (C) Ignorance of penalty, when a person is not cognizant that a sanction has been attached to a particular crime.

The law concerning irregularity and simple impediments is an inabilitating one, and no ignorance of invalidating or inabilitating laws excuses unless the law explicitly admits ignorance as an excuse.[49] Consequently a

46 Suarez, disp. 40, sect. 5, N. 10: Bellarmini-Palmieri, Vol. III, n. 619, etc.

47 D'Annibale, Vol. I, N. 312, note 75; Schmalz, Lib. V, tit. 37, n. 109.

48 Canon 988.

49 Cod. Jur. Can. canon, 16.

person who is ignorant of the existence of the law, is not excused from contracting an irregularity. However where ignorance exempts one from the commission of a mortal sin, it likewise exempts him from irregularity *ex delicto* indirectly.

When there is a question of a doubtful crime, which might produce an irregularity, we must make the following distinction. All laws, even those that invalidate an action or inhabilitate a person to act, do not oblige in doubt of law (dubium juris) ; in a doubt of fact (dubium facti) the Ordinary may dispense provided there is question of laws from which the Roman Pontiff usually dispenses.[50]

IX.

Irregularities and impediments are multiplied by the multiplication of the causes which produced the irregularities and the simple impediments, an exception must be made of the irregularity arising from voluntary homicide.[51]

A priest under suspension who would commit homicide, and celebrate mass, would be affected by two distinct irregularities. (Irregularity arising from homicide) and irregularity as the result of violating a canonical penalty. A judge who gave a sentence of execution in two or more cases is affected by only one irreglarity. A person guilty of two voluntary murders or abortions has incurred two distinct irregularities.

50 Cod. Jur. Can. canon 15.
51 Canon 989.

CHAPTER VI.

THE CESSATION OF IRREGULARITIES AND SIMPLE IMPEDIMENTS.

While irregularity is a perpetual impediment, it may cease through revocation by the legitimate superior, just as any other law. An obstacle to ordination which can never cease to exist is not an irregularity properly so called, since it does not proceed from Canon Law.[1] This revocation of the legitimate superior may occur in one of the following ways: A) by abrogation of the law of irregularity, as for instance, the irregularity arising from rebaptism; B) by derogation, as when the law declared that only one particular species of bigamy produced an irregularity; and C) by dispensation. A dispensation is required from all irregularities as they exist to-day. Some canonists before the new law were of the opinion that irregularity on account of crime was removed by baptism, however this opinion cannot be sustained, since a person is not capable of contracting an irregularity prior to receiving that sacrament.[2] Moreover, irregularity arising from crime does not cease by absolution, because it is not a punishment properly speaking.

Since the laws on irregularity are *ex jure communi*, the Roman Pontiff alone is able to abrogate or derogate them.

In the matter of dispensation from irregularities, the Pope has absolute jurisdiction. "Omnis res per quascumque causas nascitur, per easdem dissolvitur." To obtain this dispensation recourse must be had to the sacred Congregation of the Sacraments, provided the irregularity is public, and the dispensation is sought for the external forum. When the irregularity is occult, and the dispensation concerns the internal forum, application must be made to the Sacred Penitentiary.

A limited power of dispensation is conceded to Ordi-

1 Gasparri, op. cit., N. 209.
2 Gasparri, op. cit., N. 185.

naries by law and special faculty.[3] The Ordinaries are permitted to dispense their subjects, or delegate others to do so, from all irregularities incurred by secret crime, except homicide, and abortion that is effective, and crimes brought before court.[4] This power was given to bishops by the Council of Trent.[5] Ordinaries comprise all those enumerated under canon 198, and the vicar generals of vicars and prefects apostolic.

If the crime were public, or notorious the ordinary has not the power to act, but must appeal to the congregation of the Sacraments. The Ordinary, moreover, can only use his dispensing power for his own particular subjects. In a voluntary homicide which is public and notorious, the Pope himself rarely dispenses.

The term *deductum ad forum* (judiciale) mentioned in this canon might give rise to some difficulty. It is the more accepted opinion that the forum judiciale is a competent tribunal of justice whether lay or ecclesiastical. A crime is said to be *deductum ad forum judiciale,* when it is laid before this tribunal. This takes place through denunciation or accusation before a legitimate judge. If the person concerned was declared innocent by the judge, even though illicit means were employed to exact this decision, the Ordinary has power to dispense, provided the crime remains occult, which very seldom will occur. The Ordinary does not enjoy this power if one received a condemnatory decision from the court, since the crime then becomes of its very nature public or notorious. A crime is called, notorious by notoriety of the law, after the sentence of a competent judge has become a res judicata, that is, a sentence from which there is no appeal, or after a confession made in court in the presence of the judge.[6]

The forum contensiosum must be a competent court. This applies to both lay and ecclesiastical tribunals. Con-

3 Decree of the Sacred Consistorial Congregation, 25th. Oct., 1918.
4 Canon 990, N. 1.
5 Council of Trent, Sess., XXIV, Cap. VI, de ref.
6 Cod. Jur. Can. canon 2197 N. 2.

sequently those persons who enjoy the privilege of the ecclesiastical forum, in accordance with canons 120, 614, and 680, would not be considered as *deductum ad forum judiciale,* if they were tried in a civil court for certain crimes. In those cases only in which the civil authority as well as the Church has the right to judge the case, may a crime be considered as laid before the *forum judiciale.* However when a crime has been brought to the civil court for adjudication, the ordinary may lose his faculty if the case is public.

The confessor enjoys the same faculty as the Ordinary, in more urgent and occult cases, in which the Ordinary cannot be asked, and there is imminent danger of great harm or of infamy, which faculty can be made use of only for the purpose that the penitent may licitly exercise the orders he has received.

This faculty enjoyed by the confessor differs somewhat from that of the Ordinary. In the first place, the case must be very urgent, to such an extent that recourse cannot be had to the Ordinary. Secondly, there must be imminent danger of great harm or of infamy. Finally, the confessor has power to dispense a cleric, only from irregularity, so as to allow him to licitly exercise the orders he has received.[7]

The petition for dispensation from irregularities should be wrtiten in either the Latin, Italian, French, English, Portugese, or German languages, when the case is public. In occult cases, the petition may be written in any language.[8] When the dispensation concerns the external forum the real name of the party may be employed, when it concerns the internal forum a fictitious name should be used, as in all the petitions to the Penitentiary. In the petition for dispensation, all irregularities and impediments must be specified, otherwise a general dispensation will be valid for irregularities concealed in good faith, except voluntary homicide and effective abortion, but it will not be valid for those concealed in bad faith. When there is a question of voluntary homicide the ex-

7 Noldin, op. cit., vol. III, n. 680 d.
8 Gasparri, Tractatum Canonicum de Matrimonio, n. 352.

act number of crimes must be specified, otherwise the dispensation is invalid.[9] A general dispensation is invalid therefore in those cases in which irregularities or simple impediments were concealed in bad faith, and in which the irregularities arising from voluntary homicide or effective abortion were concealed even in good faith.

It expediates matters greatly if the petition for dispensation has the recommendation of the Ordinary who is to confer the orders. The brief or rescript is sent to the Ordinary, when the case is public. When the rescript concerns the external forum the execution must be made in writing.[10] The executor should observe all the conditions found in the rescript. He is obliged moreover to proceed as if he had received a mandate, and unless he complies with the essential conditions found in the rescript, and followed in substance the required mode of procedure, the execution is invalid.[11]

There must always be a just and reasonable cause, when a dispensation from irregularity and simple impediments is desired. Moreover due regard must always be had to the importance of the law from which the dispensation is given. When there is doubt as to the sufficiency of the cause, a dispensation may be lawfully sought, and licitly and validly granted.[12]

When a general dispensation is given to receive orders it is generally valid for major orders also, and the person who is dispensed can receive nonconsistorial benefices, even those to which the care of souls is attached, but he cannot be made a Cardinal, Bishop, Abbott or Prelate Nullius, nor a major superior in clerical exempt orders.[13]

A benefice is called consistorial if it is conferred in consistory, others are known as nonconsistorial.[14]

Sometimes a limited dispensation is contained in the rescript, as for instance, a person may receive permis-

9 Cod. Jur. Can. canon, 991, N. 1 and 2.
10 Cod. Jur. Can. canon, 56.
11 Cod. Jur. Can. canon, 55.
12 Cod. Jur. Can. canon, 84.
13 Cod. Jur. Can. can. 991 N. 3.
14 Cod. Jur. Can. canon, 1411 N. 1.

sion merely to receive minor orders or sub-deaconship. A person obtaining a dispensation from irregularity or simple impediment, to receive a benefice, cannot be advanced to an order higher than that which is necessary to exercise the benefice. One dispensed to receive a certain order, may not accept a benefice which does not require the exercise of that order. On the contrary, a person dispensed to receive a benefice is able to receive and exercise the order, the use of which is required by the benefice. When a dispensation has been given to be advanced to an order the one dispensed may receive the order, accept the benefice which requires the use of that order, and receive, moreover, all the lower orders; just as one dispensed to exercise major, may exercise minor orders.[15]

Persons born illegitimately, even though legitimated by the subsequent marriage of the parents, or made capable of receiving orders and dignities by Apostolic dispensation, are excluded from the Cardinalate. Likewise, persons irregular, either ex defectu, or ex delicto, for advancement to orders, although rendered capable by dispensation.[16] This is true of the bishopric, and abbots or prelates nullius, and major superiors in a clerical exempt order. To obtain any of these offices a special dispensation is required.

Finally, a dispensation in the internal extra-sacramental forum must be given in writing, and record must be made of it in the secret archives of the Curiae of the respective Ordinary.

Besides the common archives there should be a strictly secret one. The Ordinary should provide a secret place where all documents of a private nature should be retained. Those documents which appertain to criminal cases and moral matters, and which concern deceased persons, or to cases settled by a condemnatory sentence over ten years old, should be taken out of the archives each year and burned. A brief summary of the case

15 Schmalz., V, XXXVII, n. 125. Suarez, disp. XLI, sect. III.
16 Canon 232, Parag. II, n. I.

with the text of the sentence alone should be preserved.[17]

No particular form is prescribed in the dispensation. The following or similar words may be employed. "Dispenso tecum in irregularitate, quam ob hanc causam incurristi, in nomine Patris et Filii et Spiritus Sancti. Amen.

On October 25th, 1918, the Sacred Congregation of Consistory published a decree concerning clerics returning from the war, in which special reference is made to certain irregularities.

Unfortunately many priests were seriously injured in the world war. As a result some were unable to perform the duties of their office with dignity and reverence, and consequently were affected with the irregularity arising from defect of body. By virtue of this decree Ordinaries of places and religious, were empowered to dispense their priests from the irregularity arising from defect of body, after the latter returned from the service. However, before exercising this power it is incumbent on the Ordinary to conscientiously judge the fitness of the priest in question, and this judgment is not to be made until he has perused a written testification from the master of ceremonies. This latter should attest to the fact that the afflicted priest can without assistance and with decorum observe the liturgical rules of the Mass. When there is a more serious disability, or when there is a doubt, and in all cases which do not concern priests, recourse must be had to the Holy See. By the term Ordinarii locorum as found in the decree, all those are included, mention of which is made in canon 198. The decree also gives this faculty to the major superiors of clerical exempt religious orders.

In the old law as has been noted, soldiers who in battle killed or mutilated no matter how just their cause, were affected with the irregularity *ex defectu lenitatis*.. Some canonists maintained that an irregularity thus contracted arose not merely *ex defectu* but *ex delicto* as well. This opinion seems to be borne out in the new law. The irregularity arising from voluntary homicide still exists

17 Canon 379, N. 1.

but this can seldom be extended so as to include war. The probable reason why the Code abrogates the former irregularity arising from mutilation or homicide in war, is that it is impossible for the individual soldier to determine the justice or injustice of the action of his government. Then, too, he is frequently subjectively convinced of the justice of the cause for which he is fighting. Moreover compulsory military service is nearly general so that the soldier is not a free agent.

The decree under discussion grants to all Ordinaries the faculty of dispensing from this irregularity which at one time was called *ex defectu lenitatis*. This dispensation may only be obtained by those priests, clerics, seminarians, and members of religious orders who were forced into the military service, by necessity. When there is a question of a cleric in sacred orders and who volunteered his services, the petition for dispensation must be sent to Rome. The decree provides for the tacit resignation of clerics. This is accomplished and signified by a definite fact, upon which the law has decreed the loss of an ecclesiastical office. If a cleric enlisted voluntarily in the army or navy contrary to the rule laid down in canon 141, n. 1, it is presumed that he resigned the office formerly held by him: The fact must be borne in mind when a dispensation is obtained that restoration of ecclesiastical office is not effected.

The reason that the Consistorial office gave this faculty to Ordinaries is because of the fact that it was possible to contract the irregularity *ex defectu lenitatis*, during the early stages of the war and until Pentecost 1918. It was necessary for the Holy See to take cognizance of this fact since an irregularity is of its nature perpetual and ceases only through dispensation.

Since Ordinaries may dispense from irregularities only in certain cases and not in others, it is incumbent on them to examine each particular case to decide whether recourse must be had to Rome, or whether they themselves enjoy the power to dispense.

Priests who have returned from the service and are conscious of the fact that they are affected by an irregu-

larity reserved to the Holy See, are forbidden to exercise the sacred offices of the ministry, until the proper dispensation is obtained. This prohibition does not seem to affect the validity of an action performed in contradiction to it but merely its legitimacy. The reason is that violation of the law on irregularity is never concerned with the validity of the action.

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